Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

IN THE MATTER OF:

VMS LIMITED PARTNERSHIP
SECURITIES LITIGATION

JOHN R. KIRWAN, CAROLYN KIRWAN,
THE JOHN R. KIRWAN TRUST,
CAROLINE SUSAN KIRWAN
and KATHLEEN MARY KIRWAN,

Petitioners.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

PETITION FOR WRIT OF CERTIORARI

DAVID L. SHELLER
Counsel of Record
DAVID L. SHELLER & ASSOCIATES
Texas Bar No. 18193700
440 Louisiana, Suite 1550
Houston, Texas 77002
(713) 961-0291
(713) 961-5112 – FAX

Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

71PP

QUESTIONS PRESENTED

1. Certiorari should be granted so that the Supreme Court may consider whether the absence of a settling defendant's name in a notice of class action settlement is unreasonable per se since it fails to provide adequate notice of the release of claims against that defendant in violation of the Due Process Clause of the Fourteenth Amendment.

   The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must specifically inform class members of the identity (*i.e.*, name) of each defendant which the settlement is releasing from liability so the class members may adequately evaluate their interests in the proposed settlement.

2. Certiorari should be granted so that the Supreme Court may consider whether a blanket release of claims unrelated to the cause of action made the primary subject matter of a class action settlement is unreasonable per se because it fails to provide adequate notice of claims and causes of action being waived in violation of the Due Process Clause of the Fourteenth Amendment.

   The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must adequately inform class members of the claims and causes of action they are waiving so the class members may adequately evaluate the proposed settlement.

CERTIFICATE OF INTERESTED PERSONS

The following parties have an interest in the outcome of this case:

(1) John R. Kirwan and Carolyn Kirwan

(2) The John R. Kirwan Trust, and Caroline Susan Kirwan and Kathleen Mary Kirwan, as Trustees

(3) David L. Sheller & Associates (David L. Sheller)

(4) Connecticut General Life Insurance Company

(5) Kathleen J. Hughes, individually and as an agent of Connecticut General Life Insurance Company

(6) Baker & Botts, L.L.P. (Allister Waldrop)

(7) Jenner & Block (Ellen R. Kordik)

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TO THE HONORABLE JUDGES OF SAID COURT:

COME NOW Petitioners, JOHN R. KIRWAN, CAROLYN KIRWAN, THE JOHN R. KIRWAN TRUST, CAROLINE SUSAN KIRWAN and KATHLEEN MARY KIRWAN ("the Kirwans" or "Petitioners") and pray that this Honorable Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in the Petitioners' appeal from an injunction issued by the United States District Court for the Northern District of Illinois.

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is an unpublished order: *In the Matter of VMS Limited Partnership Securities Litigation*; No. 97-1617; March 19, 1998. Appendix "A."

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was rendered on March 19, 1998, and the Order denying a rehearing was issued on May 14, 1998. Appendix "B."

Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND FEDERAL RULES AT ISSUE

This case involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Rule 23(c) and (e) of the Federal Rules of Civil Procedure:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . . " U.S. CONST. amend. XIV § 1.
>
> "In any class action . . . , the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2).
>
> "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." FED. R. CIV. P. 23(e).

STATEMENT OF THE CASE

On April 24, 1991, John R. Kirwan and his wife, Carolyn, entered into a financial planning contract with CIGNA Securities, Inc. On October 9, 1991, in an unrelated transaction, Mr. Kirwan purchased a $600,000.00 life insurance policy from Connecticut General Life Insurance Company. Nowhere on the policy does it indicate that Connecticut General Life Insurance Company is an affiliate of CIGNA Securities, Inc. **CIGNA Securities, Inc.**

specifically excluded the purchase of insurance products from being part of the financial planning contract.

On February 23, 1993, a settlement notice from the U.S. District Court for the Northern District of Illinois was sent to members of several classes involved in the *VMS Limited Partnership Securities Litigation*, including a Financial Planning Class of which, by virtue of the April 1991 financial planning agreement with CIGNA Securities, Inc., Mr. and Mrs. Kirwan were members. A summary of the settlement notice was published in the *Wall Street Journal* on March 4, 1993. Mr. and Mrs. Kirwan did not opt out of this class settlement. **The notice did not advise class members that Connecticut General Life Insurance Company was included as a settling defendant; Connecticut General was not specifically named in the settlement notice.**[1]

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[1] The notice failed to advise class members or the Kirwans that their causes of action against Connecticut General Life Insurance Company for "twisting," "churning," "piggybacking," or "financed insurance" (all hereinafter "churning") were included in the class.

"Churning" involves claims where policy values from other policies are used to finance the purchase and maintenance of a new policy. This is almost always against the policyholder's best interest since the cost of insurance increases as people age and new commissions and expenses are incurred by the sale. Many times loans placed on old policies without the policyholder's knowledge or consent will cause all policies to fail (*i.e.*, lapse). A lapse may also involve phantom taxable income to the policyholder. The agents and their managers are motivated to commit this type of fraud because large commissions and overrides are generated from the sale of new policies using cash value from 10- to 20-year-old policies, and it

On May 21, 1993, the final judgment in the *VMS Limited Partnership Securities Litigation* was signed by the U.S. District Court for the Northern District of Illinois.

In 1996, Mr. and Mrs. Kirwan discovered that they had been defrauded by Connecticut General Life Insurance Company and its agent, Kathleen J. Hughes, because the $600,000.00 life insurance policy purchased in October 1991 and owned by the John R. Kirwan Trust was paid for by "churning" six of the Kirwans' old life insurance policies. There were substantial cash values in the Kirwans' old policies which were lost. The "churned" policies consisted of three American General Life Insurance Company policies, two Government policies, and one Equitable Life Insurance Company policy. A separate and independent class action was filed against Connecticut General Life Insurance Company for the practice of "churning" life insurance policies. The Kirwans received notice from the United States District Court for the Central District of California; No. CV 95-3566 HLH (Ex.), *Alan B. Spitz et al. vs. Connecticut General Life Insurance Company*. The Kirwans chose to opt out of the class action filed against Connecticut General in California.

John R. Kirwan and Carolyn Kirwan, individually, and Caroline Susan Kirwan and Kathleen Mary Kirwan, as trustees of the John R. Kirwan Trust, filed suit against Connecticut General Life Insurance Company in the 189th District Court of Harris County, Texas, on August 30, 1996 ("the Texas action"). On November 19, 1996, a

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usually takes many years for the policyholders to discover that they have been defrauded.

group known as the CIGNA Settling Defendants filed a Motion in the U.S. District Court for the Northern District of Illinois to enjoin the Kirwans from pursuing the Texas action, claiming that the causes of action made the subject of the Texas action had been released in the *VMS Limited Partnership Securities Litigation* settlement. The Defendant's Motion to Enjoin was granted by Judge James B. Zagel on February 12, 1997. *See* Judge Zagel's Order, Appendix "C."

An appeal of Judge Zagel's Order enjoining the Kirwans' from pursuing the causes of action against Connecticut General Life Insurance Company in the 125th District Court of Harris County, Texas was made, and the U.S. Court of Appeals for the Seventh Circuit affirmed Judge Zagel's judgement on March 19, 1998. The Kirwans petitioned the Court of Appeals for a rehearing of this matter. The Petition for Rehearing was denied on May 14, 1998.

ARGUMENTS FOR GRANTING WRIT

1. **Certiorari should be granted so that the Supreme Court may consider whether the absence of a settling defendant's name in a notice of class action settlement is unreasonable per se since it fails to provide adequate notice of the release of claims against that defendant in violation of the Due Process Clause of the Fourteenth Amendment.**

The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must specifically inform class members of the identity (*i.e.*, name) of each

defendant which the settlement is releasing from liability so the class members may adequately evaluate their interests in the proposed settlement.

The first page of the *VMS Limited Partnership Securities Litigation* settlement notice does not state that purchasers of life insurance from Connecticut General Life Insurance Company are included in the settlement class. Nothing in the Kirwans' life insurance contract with Connecticut General Life Insurance Company connects Connecticut General to CIGNA Securities, Inc. or to any arrangement between CIGNA Securities, Inc. and the Kirwans. *See* John R. Kirwan's life insurance policy No. 5065553 and the Life Insurance Application, Appendix "D." The life insurance purchase agreement between Mr. Kirwan and Connecticut General Life Insurance Company was completely separate from the Financial Planning Contract which was the subject matter of the *VMS Limited Partnership Securities Litigation* settlement. The class settlement notice sent to class members in the *VMS Limited Partnership Securities Litigation* did not identify Connecticut General Life Insurance Company as a party to the litigation or settlement. The Kirwans, therefore, could not have anticipated that the settlement would release causes of action arising from their relationship with Connecticut General Life Insurance Company. The straight forward rule is that a party releases only those other parties whom he intends to release. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 347 (1971).

Perhaps the most elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is that notice must be reasonably

calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). *See also* FED. R. CIV. P. 23(c)(2) (the court shall direct to the members of the class the best notice practicable under the circumstances). The notice must be of such a nature as to reasonably convey to the parties the required information. *Mullane*, 339 U.S. at 314. Moreover, the class notice sent to plaintiffs in a class action should sufficiently describe both the action and the plaintiffs' rights in it. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). A notice which does not identify the defendant does not sufficiently describe the action or the plaintiffs' rights.

The notice requirement of due process breaks down into two elements. First, the notice must be given in such a manner that it is reasonably likely to reach its intended audience. Second, the content of the notice must reasonably inform the recipient of the nature of the upcoming proceeding and the party's rights in it. *See Mullane*, 339 U.S. at 314; *In re Auto-Train Corp.*, 810 F.2d 270, 278-79 (D.C. Cir. 1987); *Mendoza v. United States*, 623 F.2d 1338, 1350-52 (9th Cir. 1980), *cert. denied sub nom., Sanchez v. Tucson Unified School Dist. No. 1*, 450 U.S. 912 (1981). Thus, to be effective, the class notice must be understandable by the recipient. *White v. Alabama*, 74 F.3d 1058, 1066 n.27 (11th Cir. 1996). Failure to meet either of these elements renders the notice defective. The who?, what?, when?, where?, why? and how? of the action must be contained in an adequate class action notice.

The notice sent to Mr. and Mrs. Kirwan informing them of the pendency of the *VMS Limited Partnership Securities Litigation* class action settlement specifically informed them that the Financial Planning Services Contract they entered into with CIGNA Securities, Inc. in April 1991 was included in the proposed settlement; however, the class settlement notice did not inform the Kirwans that claims they might have against Connecticut General Life Insurance Company would also be released. The notice did not state that Connecticut General Life Insurance Company was an entity that would be released in the settlement, although it did explicitly identify several other CIGNA-related entities by name. The class settlement notice failed to make any connection between the CIGNA Securities, Inc. financial planning agreement and the separate and distinct life insurance policy purchased from Connecticut General Life Insurance Company.

The requirement that the class settlement notice be the best practicable, reasonably calculated under these circumstances, to adequately inform the Kirwans that the Connecticut General life insurance policy would be included in the release could have easily been met by listing all companies which were affiliates of CIGNA Securities, Inc. This additional information would not have been much more burdensome to include and would have provided class members with the specific information they needed to evaluate the rights, claims, and causes of action which were being released and the fairness and adequacy of the proposed settlement. Such information is not only a good thing to include in class settlement notices, it is required to be included by the

mandates of due process. *See Shutts*, 472 U.S. at 812; *Mullane*, 339 U.S. at 314. The notice must be of such nature as reasonably to convey the required information, and must be such as one desirous of actually informing the class member of his rights might reasonably adopt to accomplish it. *See Mullane*, 339 U.S. at 314-15. Failure to meet these due process requirements renders the notice defective.

The class action settlement notice in the *VMS Limited Partnership Securities Litigation* was defective on its face. The notice did not inform the Kirwans that the settlement included Connecticut General Life Insurance Company and would discharge all rights they had to bring an action against Connecticut General. The Kirwans did not receive the due process guaranteed by the United States Constitution as to their causes of action against Connecticut General Life Insurance Company, and the Kirwans should not be prohibited from exercising their right to redress in the Texas action by the broad and general release of claims contained in the *VMS Limited Partnership Securities Litigation* settlement.

The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must specifically inform class members of the identity (*i.e.*, name) of each defendant which the settlement is releasing from liability so the class members may adequately evaluate their interests in the proposed settlement.

2. **Certiorari should be granted so that the Supreme Court may consider whether a blanket release of claims unrelated to the cause of action made the primary subject matter of a class action settlement is unreasonable per se because it fails to provide adequate notice of claims and causes of action being waived in violation of the Due Process Clause of the Fourteenth Amendment.**

The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must adequately inform class members of the claims and causes of action they are waiving so the class members may adequately evaluate the proposed settlement.

The Financial Planning Services Contract entered into by John and Carolyn Kirwan and CIGNA Securities, Inc. on April 24, 1991, and which was the subject of the *VMS Limited Partnership Securities Litigation*, specifically stated that the contract was "limited to recommending strategies . . . " and that the services to be provided were "analytical and advisory only. . . . " *See* Financial Planning Services One Year Contract, Appendix "F," at ¶ 5. The contract goes on to state as follows:

> **Implementation of product related recommendations is not included under this financial planning contract.** If you desire, CIGNA Securities, Inc. and its affiliates, **acting in a sales capacity**, will recommend specific investments, insurance or other financial products through which your plan can be specifically implemented. The purchase of such products normally results in the payment of commissions.

Id. (emphases added). Therefore, the purchase of insurance, securities or other investment or financial products was a distinct and separate transaction, and the "churning" of the Kirwans' old policies, which resulted from John Kirwan's purchase of a life insurance policy from Connecticut General Life Insurance Company, gives rise to separate and distinct causes of action which were not contemplated in the *VMS Limited Partnership Securities Litigation* class settlement notice.

The claims asserted in the Texas action arose from a separate and distinct transaction, which was specifically excluded from being part of the financial planning agreement. The Kirwans' purchase of life insurance from Connecticut General Life Insurance Company in October 1991 was not part of the Financial Planning Services Contract which was subject to the Release of Claims contemplated in the *VMS Limited Partnership Securities Litigation* class settlement notice. Nothing in the life insurance contract connects that purchase of life insurance to any financial plan or financial planning service of CIGNA Securities, Inc., or any arrangement between CIGNA and the Kirwans. *See* John R. Kirwan's life insurance policy No. 5065553 and the Life Insurance Application, Appendix "D."

The life insurance purchase agreement between Mr. Kirwan and Connecticut General Life Insurance Company required additional and separate consideration from Mr. Kirwan and was a completely separate transaction. The Financial Planning Services Contract identified in the settlement notice, which made John and Carolyn Kirwan members of the settlement class, explicitly excluded the purchase of products such as life insurance from being

part of the contract. The Kirwans, therefore, could not have anticipated that the settlement would release causes of action arising from the "churning" of their old life insurance policies to finance the policy purchased from Connecticut General Life Insurance Company.

The arguments and authorities contained in the first Argument for Granting Writ, regarding the requirement of due process, apply with equal force to this second Argument for Granting Writ and are incorporated herein by reference as if set forth in their entirety. *See* discussion and cases cited *supra*, pp. 7-8. A blanket release of claims does not advise the plaintiffs of what rights are being released.

The notice sent to Mr. and Mrs. Kirwan informing them of the pendency of the *VMS Limited Partnership Securities Litigation* class action settlement specifically informed them that the Financial Planning Services Contract they entered into in April 1991 was included in the proposed settlement; however, the class settlement notice failed to inform the Kirwans that claims relating to the life insurance policy purchased in a totally separate transaction would also be released. The purchase of insurance products had been specifically excluded from the financial planning contract. The class settlement notice failed to make any connection between the CIGNA Securities, Inc. financial planning agreement and the separate and distinct life insurance policy purchased from Connecticut General Life Insurance Company. The Kirwans never received valid consideration for the alleged release of future claims against Connecticut General Life Insurance Company.

The class action settlement notice in the *VMS Limited Partnership Securities Litigation* was defective on its face. The notice did not inform the Kirwans that the settlement included Connecticut General Life Insurance Company and would discharge all rights they had to bring an action against Connecticut General for the "churning" of their old life insurance policies which resulted from the purchase of a life insurance policy in a transaction totally separate and distinct from the financial planning agreement which was the subject of the *VMS Limited Partnership Securities Litigation*. The Kirwans did not receive the due process notice guaranteed by the United States Constitution as to their life insurance "churning" causes of action, and they should not be prohibited from exercising their right to redress in the Texas action by the broad and general release of claims contained in the *VMS Limited Partnership Securities Litigation* settlement.

"Courts should not recognize general releases of claims not known or contemplated by the parties at the time of the release." *Fair v. International Flavors & Fragrances*, 905 F.2d 1114, 1115 (7th Cir. 1990). In *Wagner v. Nutrasweet Co.*, the Northern District of Illinois also emphasized that claims not within the contemplation of the parties cannot be waived by signing a general release. 873 F. Supp. 87 (N.D.Ill. 1994), *aff'd*, 95 F.3d 527 (7th Cir. 1996) (citing *Riley v. American Family Mutual Ins. Co.*, 881 F.2d 368, 371 n. 6 (7th Cir. 1989) ("prospective waivers are unenforceable")). *See also Village of Fox River Grove Ill. v. Grayhill, Inc.*, 806 F. Supp. 785, 795 (N.D.Ill. 1992).

The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must adequately

inform class members of the claims and causes of action they are waiving so the class members may adequately evaluate the proposed settlement.

CONCLUSION

The Seventh Circuit Court of Appeals decision should be overruled to clarify the minimum requirements of due process. The Kirwans never received valid consideration for the alleged release of future claims against Connecticut General Life Insurance Company for the "churning" of their life insurance policies. The blanket release of all claims against CIGNA-related entities provided the Kirwans with no remedy for the fraudulent acts of Connecticut General Life Insurance Company, and the alleged release should not be enforced. The Kirwans also had no idea they had been "churned," because the notice failed to inform them of the definition of "churning" and the release of claims for "churning." If the release had included the definition of "churning," the Kirwans would have been able to effectively exercise their right to stay in or opt out of the class. The California class action against Connecticut General Life Insurance Company did effectively advise the Kirwans of their rights, and the Kirwans chose to opt out of that class action. The requirement of due process through effective notice should be enforced, and the Kirwans should be allowed to pursue the Texas action.

The Release of Claims in the *VMS Limited Partnership Securities Litigation* class settlement notice is so broad it could be argued that, if the Kirwans were involved in a

traffic accident with a CIGNA associate or agent, their tort claims against that associate or agent would be barred by the release. Obviously, the notice did not contemplate the release of tort claims involving the sale of life insurance, because, if it had, The John R. Kirwan Trust could have easily been notified, as it was in the later class action litigation specifically filed against Connecticut General Life Insurance Company (Spitz vs. Connecticut General Life Ins. Co.; Case No. CV 95-3566 HLH (Ex.) in the U.S. District Court for the Central District of California).

The CIGNA Settling Defendants have used a happenstance transaction as a technicality to extend the *VMS Limited Partnership Securities Litigation* settlement. If the John R. Kirwan Trust and trustees were indeed meant to be included in the *VMS Limited Partnership Securities Litigation* class settlement, then why did the Spitz vs. Connecticut General class action not exclude them from its class definition? The CIGNA Settling Defendants' ploy to use the *VMS Limited Partnership Securities Litigation* settlement in this manner is a gross miscarriage of justice and a clear violation of due process. As such, Judge Zagel's order enjoining the Texas action, and the Seventh Circuit opinion affirming the order, should not be allowed to stand.

WHEREFORE PREMISES CONSIDERED, Petitioners JOHN R. KIRWAN, CAROLYN KIRWAN, THE JOHN R. KIRWAN TRUST, CAROLINE SUSAN KIRWAN and KATHLEEN MARY KIRWAN respectfully request that this Honorable Court grant this Petition for Writ of Certiorari in this matter and order that the injunction imposed on the Kirwans by Judge Zagel be lifted to allow

the Kirwans' lawsuit against Connecticut General Life Insurance Company and Kathleen J. Hughes in the 189th District Court of Harris County, Texas to proceed and for all such other and further relief, both at law and in equity, to which the Kirwans may be justly entitled.

Respectfully submitted,

DAVID L. SHELLER
Counsel of Record
DAVID L. SHELLER & ASSOCIATES
Texas Bar No. 18193700
440 Louisiana, Suite 1550
Houston, Texas 77002
(713) 961-0291
(713) 961-5112 – FAX

Attorney for Petitioners

APPENDIX A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued September 16, 1997
Decided March 19, 1998

Before

Hon. Richard D. Cudahy, *Circuit Judge*

Hon. Joel M. Flaum, *Circuit Judge*

Hon. Daniel A. Manion, *Circuit Judge*

IN THE MATTER OF: VMS LIMITED PARTNERSHIP SECURITIES LITIGATION	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 97-1617	)	No. 90 C 2412
APPEAL OF: JOHN R. KIRWAN, CAROLYN KIRWAN, CAROLINE S. KIRWAN, et al.	)	James B. Zagel, *Judge.*

ORDER

The district court permanently enjoined the appellants from prosecuting claims they had asserted in a state court case in Texas. The district court determined that the appellants were attempting to pursue claims they had released in a settlement of a class action that

the court had approved. This is part of the VMS Partnership litigation (*VMS Partners*) described *In the Matter of: VMS Sec. Litig.*, 103 F.3d 1317, 1319-20 (7th Cir. 1996) (VMS), albeit a different settlement involving other defendants.

The appellants are John R. Kirwan, Carolyn Kirwan, (the Kirwans) and the Trustees of the John R. Kirwan Trust (the Trust). They sued Connecticut General Life Insurance Company (Connecticut General) and Kathleen Hughes, one of Connecticut General's agents, in Texas state court. The dispute involved a life insurance policy the Kirwans bought on October 9, 1991, and placed in the Trust. The appellants' Texas court petition included allegations of material misrepresentations and omissions of fact regarding the policy in violation of Texas law (the Texas Claims).

A group of related defendants in VMS Partners moved to enjoin the appellants from pursuing their Texas claims. These were the "CIGNA Settling Defendants" (CIGNA): CIGNA Securities Inc., CIGNA Corporation, CIGNA Individual Financial Services Company, Insurance Company of North America, and CIGNA Realty Resources, Inc. – Sixth. Connecticut General and Kathleen Hughes are each a "CIGNA Entity," defined in a settlement notice of February 2, 1993, to include CIGNA, its affiliates and associates. According to CIGNA, the Kirwans belonged to a class of plaintiffs who had, as part of a settlement, released claims such as the Texas Claims – that is, any and all

> claims, actions, allegations, causes of action, demands, defenses, counterclaims, set-offs (both

> legal and equitable), rights or liabilities whatsoever-including, but not limited to, *known and unknown* claims in connection with, arising out of, or in any way related to any acts, facts, transactions, occurrences, representations, or omissions that *have been* or *might have been* asserted in the Partnership Action, the Funds Action, the *Financial Planning Action*, or any of the Consolidated Actions – that in any way arise from or relate to the Partnership or Funds, to the interests in the Partnership or Funds, to the marketing and sale of those interests, to any financial planning agreements or investment advisory agreements entered into by or with any CIGNA Entity, to any financial planning or *investment advice* provided by or involving any CIGNA Entity, to any other securities, investments, *policies*, or products with which *any CIGNA Entity* has or had *any involvement or role* whatsoever,

excepting "contractual claims" by class members "for benefits or coverage under and in accordance with the terms of insurance policies or *annuity contracts* issued by the CIGNA Settling Defendants or their affiliates" (the Released Claims).

CIGNA contended that the Kirwans, the Trust and its Trustees were subject to a May 21, 1993, order of the district court approving the settlement and barring prosecution of any Released Claims, which included the Texas Claims. Under the settlement, the Kirwans were members of the "Financial Planning Class" consisting of all persons who entered into a financial planning arrangement with CIGNA Securities, Inc.; the Kirwans had paid $1,250 for a financial planning contract with CIGNA Securities in

April of 1991. According to the petition in the Texas suit, as part of the financial planning arrangement between CIGNA Securities and the Kirwans, the Kirwans were induced to buy the life insurance policy.

In a three-page response to CIGNA's motion and supporting memorandum, the appellants asked the district court to deny the injunction for these reasons: (1) notice of the settlement was not provided to the Trust or Caroline Susan Kirwan as Trustee, (2) the Kirwans were unaware that they had a life insurance claim when they received the notice, (3) the notice did not mention life insurance, and (4) the Kirwans received no consideration for the release of claims against Connecticut General. The district court rejected the appellants arguments on the grounds that (1) the Trust and Trustees were successors and assignees to whom notice was not required, (2) the release clearly covered future and unknown claims, (3) the notice mentioned policies, which included life insurance policies, and finally that (4) the Kirwans did receive consideration, in the form of a right to claim a share of the settlement funds, a right they simply failed to timely exercise.

Either the All Writs Act, 28 U.S.C. § 1651(a), or the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283, gave the district court jurisdiction over CIGNA's motion. The district court's memorandum opinion and order of May 21, 1993, used the same language quoted in VMS for the VMS Partners, *see VMS*, 103 F.3d at 1320, to retain jurisdiction to enforce the settlement. *See id.* at 1326 n.4; *Rivet v. Regions Bank*, No. 96-1971, 118 S. Ct. 921, n.3, 1998 WL 71832 (Feb. 24, 1998), at *6 n.3. Upon timely

request, we review interlocutory orders granting injunctions. *See* 28 U.S.C. § 1292(a)(1). After the appellants filed their timely notice of appeal, they filed untimely motions for reconsideration. We may not review orders while a timely motion for reconsideration is pending in the district court, but an untimely motion for reconsideration is another story. *See* Fed. R. App. P. 4(a)(4); *Simmons v. Ghent*, 970 F.2d 392, 393 (7th Cir. 1992). We therefore press on to consider whether the district court abused its discretion. *See VMS*, 103 F.3d at 1323.

Although the appellants raise a new argument before this court – that the notice the Kirwans received does not mention Connecticut General – most of the arguments they have preserved for appeal, *see Jean v. Dugan*, 20 F.3d 255, 265 (7th Cir. 1994), are made in almost the identical, conclusory form as presented to the district court. *Compare* Br. for Appellants 7-11 with App. of settling Def.'s-Appellees AA99-AA102. (1) Before this court, as before the district court, the appellants merely observe that no notice was sent to the Trust or to one of the Trust's trustees (although an approved notice appeared in the *Wall Street Journal* on March 4, 1993), without explaining the legal significance of the omission or citing any cases. This point is therefore waived. *See, e.g., Mathis v. New York Life Ins. Co.*, 133 F.2d 546, 548 (7th Cir. 1998) (per curiam). We note further that appellants do not argue that the Trust is not a successor or assignee of the Kirwans, that the Trust is not in privity with the Kirwans, *see Sanders Confectionary Prods. v. Heller Fin.*, 973 F.2d 474, 481 (6th Cir. 1992), or that CIGNA had notice of the assignment at the time of the settlement, *see In re Fine Paper Lit.*, 632 F.2d 1081, 1091 (3d Cir. 1980). As nonparties to the settlement,

neither the Trust nor the Trustees could be held in contempt of the settlement order merely for having filed the Texas Claims unless they knew of the order. But they have notice now, and may become bound by the order by virtue of their privity with the Kirwans. *See Rockwell Graphics Sys. v. Dev Indus.*, 91 F.3d 914, 919 (7th Cir. 1996).

(2) The appellants argue that the term "Released Claims" "could not cover [a] claim[ ] that [they] could not have known about" at the time of the settlement. *Wagner v. Nutrasweet Co.*, 95 F.3d 527, 533 (7th Cir. 1996). But a release of "known and unknown" claims covers "claims that could arise." *Id.* (emphasis added). The plaintiffs do not explain what the reference to "unknown claims" in the settlement agreement refers to if it does not at least cover claims, based on conduct that occurred prior to the settlement, that were not "known" claims. Then too there are general releases and there are general releases. Some do not refer to unknown claims, and courts may resist inferring that such general releases, as a matter of law, extend to unknown claims. *See, e.g., Beauvoir v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 484 N.E.2d. 841, 847 (Ill. App. Ct. 1985). And the federal securities laws restrict released claims to "mature, ripened claims of which the releasing party had knowledge before signing the release." *Goodman v. Epstein*, 582 F.2d 388, 402 (7th Cir. 1978). There may be other circumstances in which general releases should be construed narrowly, but the appellants have not referred us to any that apply here, much less established that a general release, however worded, is always limited to claims of which a party has actual or at least constructive knowledge. The appellants have not established that, as a matter of law, the Texas Claims are

not Released Claims. Nor have they shown (or even suggested) that the district court's interpretation of the settlement language on this point was otherwise an abuse of its discretion.

(3) The district court concluded that the language in the settlement agreement covering "policies" included "life insurance policies," and so applied to the Texas Claims. We would consider whether this conclusion – although it seems sensible – was an abuse of discretion if the appellants suggested any reason why it was, but they do not. (4) For the same reason, we must accept the district court's conclusion that the option the Kirwans received was consideration for their release of Released Claims. The Kirwans do not contend that the option to submit a settlement claim was worthless at the time of the settlement. There is also no requirement that a class member submit a claim form before being bound by a class action settlement. *See* 3 *Newberg on Class Actions* §§ 16.20-16.25 (3d ed. 1992).

The judgment is AFFIRMED.

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 14, 1998.

Before

Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge

IN THE MATTER OF:

VMS LIMITED PARTNERSHIP SECURITIES LITIGATION

No. 97-1617 v.

APPEAL OF:

JOHN E. KIRWAN, CAROLYN KIRWAN, CAROLINE S. KIRWAN, et al.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 90 C 2412

James B. Zagel, *Judge.*

ORDER

This case is before the court on a petition for rehearing, filed on April 2, 1998. All of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX C

PROPOSED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

In the Matter of VMS LIMITED PARTNERSHIP SECURITIES LITIGATION Consolidated Pretrial Proceeding	Case No. 90 C 2412 Judge James B. Zagel

ORDER GRANTING CIGNA SETTLING DEFENDANTS' MOTION TO ENFORCE JUDGMENT AND TO ENJOIN JOHN R. KIRWAN, CAROLYN KIRWAN, CAROLINE SUSAN KIRWAN, KATHLEEN MARY KIRWAN AND THE JOHN R. KIRWAN TRUST FROM ASSERTING RELEASED CLAIMS

The Court being presented with the CIGNA Settling Defendants' Motion To Enforce Judgment And To Enjoin John R. Kirwan, Carolyn Kirwan, Caroline Susan Kirwan, Kathleen Mary Kirwan And The John R. Kirwan Trust From Asserting Released Claims, and being advised of the bases for that motion,

HEREBY ORDERS that the motion is GRANTED. It is further ordered that:

1. John R. Kirwan and Carolyn Kirwan (the "Kirwans") are Settling Class Members in this case, as that term is defined in the January 26, 1993 Amended Stipulation Of Settlement (the "Settlement Agreement");

2. The Kirwans, the John R. Kirwan Trust (the "Trust"), and Caroline Susan Kirwan, as trustees of the Trust (the "Kirwan daughters"), are bound by this Court's May 21, 1993 final judgment order in this case;

3. This Court's prior injunction barring the initiation or prosecution of any of the claims released in the settlement applies to to [sic] the Kirwans, the Trust, and the Kirwan daughters;

4. The claims asserted in *Kirwan, et al. v. Connecticut General Life Insurance Co., et al.*, No. 96-44674 (Dist. Ct., Harris County, Texas), are Released Claims, as that term is joined in the Settlement Agreement; and

5. The Kirwans, the Trust, and the Kirwan daughters are permanently enjoined from prosecuting any of the claims asserted in *Kirwan, et al. v. Connecticut General Life Insurance Co., et al.*, No. 96-44674 (Dist. Ct., Harris County, Texas), and from prosecuting any other action or proceeding against any CIGNA Released Person relating to the Released Claims, as those terms are defined in the Settlement Agreement.

Dated: Feb. 12, 1997 /s/ James B. Zagel
James B. Zagel, United States District Judge

Keith F. Bode
J. Kevin McCall
Ellen R. Kordik
JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

Attorneys for CIGNA Securities, Inc.
(now known as CIGNA Financial Advisors, Inc.)

(Reserved for use by the Court)

ORDER

In Re VMS	90 C 2412	Judge Zagel

This is another of a series of cases in which settling defendants in a class action seek to enjoin purported members of the settling plaintiff class from pursuing released claims in other courts. The law governing these cases is clear, largely as a result of decisions on appeal from other rulings in this and one other large scale litigation over the operations of VMS. While the law is clear, its application obviously requires attention to the detail of each situation in which an injunction is sought.

The Kirwan respondents have sued Cigna and its agent Hughes. The case is in Texas and alleges bad financial advice was given, and there was wrongful inducement to buy a life insurance policy without disclosing the effect of interest rates on premiums. John Kirwan and his spouse bought the policy and put it in a trust of which their daughters are trustees. In Texas the Kirwans are suing on their own behalf, and their daughters are suing on behalf of the trust. The Kirwans are members of the Financial Planning Class which settled here. They did not opt out. Under the terms of the settlement, this releases their claims and those of successors and assignees. And the release is very broad in its definition of the claims in encompasses.

The response of the Kirwans is difficult to fathom since it first discusses a California lawsuit from which

they have opted out, perhaps to show that they are willing to opt out of class actions. Of course it also shows that they know how to opt out when they want to do so. The California action may well have had some overlap with the case here and a specific provision was made to permit recovery in the California action for claimants without attorneys and subject to a set off for what was paid in the case here. Whatever waiver of Cigna's rights under the release happens to have been made in the California case does not help the Kirwans, if no other reason than the fact they opted out of the California case and under the California settlements terms were remitted to whatever relief they had not released. The rest of their points are these: the settlement notice did not specifically mention life insurance, and they thought their deal with Cigna involved only stocks and bonds, the notice was not sent to the trust or the trustees, and they did not get a dime out of the settlement. The basic facts which underlie Cigna's motion are not disputed. The Kirwans' arguments fail (assuming one can call their conclusory text an argument). The notice did refer to policies, not just to stocks and bonds and other investments. There is no weight to the argument that the failure to mention "life" insurance policies is a flaw in the notice. I am unwilling to credit the proposition that "any policies" does not include life policies; just as I was unwilling to credit the argument I recently heard that commissions were not due on sales of birthday party food because the contract did not mention birthday parties and merely called for commissions on all sales. The relationship which is the subject of the Kirwan's Texas lawsuit is the financial planning and estate planning advice they got from Cigna

and this, as they tell us in the Texas lawsuit, was the suggestion to buy the policy.

Notice did not have to be sent to successors and assignees. The trust might have a claim against the Kirwans for their failure to notify it but the trust has no claim against Cigna.

The release covered future or unknown claims and it clearly said so. The Kirwan's lack of awareness then of what is now claimed in Texas does not save the Texas case.

The Kirwans never submitted a claim form and this is why they never received money but they did receive consideration which was the right to claim and receive it. They made no use of that consideration but they had it and have never sought relief from this court (and do not now) from the financial consequences of failing to file a timely claim form.

Cigna's motion to enforce judgment is granted.

/s/ James B. Zagel
U.S.D.J.

APPENDIX D

Insured JOHN R KIRWAN 5065553 Policy Number

Initial Specified Amount $600,000
OCTOBER 9, 1991 Date of Issue

Connecticut General Life Insurance Company
HARTFORD CONNECTICUT

The Company agrees to pay the death benefit to the Beneficiary upon receipt of due proof of the insured's death during the continuance of the policy. The Company further agrees to pay the net cash value to the Owner on the Maturity Date provided the Insured is then alive.

Right to Examine Policy. The policy may be returned to the insurance agent through whom it was purchased or to the Company within 10 days after its receipt (20 days after its receipt where required by law for policies issued in replacement of other insurance). If the policy is so returned, it will be deemed void from the Date of Issue, and the Company will refund the premium paid.

The policy is issued and accepted subject to the terms set forth on the following pages, which are made a part of the policy. In consideration of the application and the payment of premiums as provided, this policy is executed by Connecticut General Life Insurance Company as of its Date of Issue.

(Illegible)
Registrar

Laurence P. English
PRESIDENT

Flexible Premium Adjustable Life Insurance Policy – Non-Participating Death benefit payable in the event of death before the Maturity Date. Adjustable death benefit. Net Cash Value payable on the Maturity Date.

Flexible Premiums payable to Maturity Date or prior death of the Insured. Premium Payment Periods and Supplementary Overages as shown in the Policy Specifications.

POLICY SPECIFICATIONS

INSURED	JOHN R KIRWAN
INITIAL SPECIFIED AMOUNT	$600,000
MINIMUM SPECIFIED AMOUNT	$100,000
MONTHLY ANNIVERSARY DAY	9

5065553	POLICY NUMBER
OCTOBER 9, 1991	DATE OF ISSUE
67	AGE AT ISSUE
NONSMOKER	PREMIUM CLASS
OCTOBER 9, 2019	MATURITY DATE

FORM	BENEFIT
LN505	FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE
	DEATH BENEFIT EQUALS SPECIFIED AMOUNT (WHICH INCLUDES THE CASH VALUE)

BENEFIT AMOUNT	EFFECTIVE DATE	MONTHLY INSURANCE COST	YEARS DEDUCTIBLE
SEE INITIAL SPECIFIED AMOUNT	DATE OF ISSUE	SEE PAGE 13	28

MINIMUM INITIAL PREMIUMS:
$53,727.78 DURING FIRST POLICY YEAR OR A MINIMUM OF 1/3 OF THIS AMOUNT PAYABLE DURING POLICY YEARS 1, 2 AND 3.

PAYMENT MODE: ANNUAL

NOTE: COVERAGE WILL END PRIOR TO THE MATURITY DATE SHOWN WHERE MINIMUM INITIAL PREMIUM REQUIREMENTS ARE NOT MET, OR SUBSEQUENT PREMIUMS ARE INSUFFICIENT TO CONTINUE COVERAGE TO SUCH DATE.

AS OF THE DATE OF ISSUE, THE INTEREST RATE ON ANY POLICY LOAN AS DESCRIBED IN THE "LOAN INTEREST" PROVISION ON PAGE 14 IS 8%. THIS RATE WILL STAY IN EFFECT UNTIL THE COMPANY NOTIFIES THE OWNER OF A CHANGE IN SUCH RATE.

OWNER CAROLINE KIRWAN AND KATHLEEN KIRWAN, TRUSTEES UNDER THE JOHN R KIRWAN TRUST CREATED UNDER AN AGREEMENT OF TRUST WITH JOHN ROUNSEVILLE KIRWAN, DATED OCTOBER 1, 1991, OR THE SUCCESSOR(S) IN SAID TRUST.

BENEFICIARY CAROLINE KIRWAN AND KATHLEEN KIRWAN, TRUSTEES UNDER THE JOHN R KIRWAN TRUST, CREATED UNDER AN AGREEMENT OF TRUST WITH JOHN ROUNSEVILLE KIRWAN, DATED OCTOBER 1, 1991, OR THE SUCCESSOR(S) IN SAID TRUST.

TABLE OF SURRENDER CHARGES

THE CHARGE ASSESSED UPON SURRENDER OF THE POLICY WILL BE THE LESSER OF THE SURRENDER CHARGE SHOWN OR THE THEN CURRENT CASH VALUE UNDER THE POLICY.

PRORATED SURRENDER CHARGES WILL BE ASSESSED WHENEVER THE POLICY SPECIFIED AMOUNT (DEATH BENEFIT) IS DECREASED.

POLICY YEAR	SURRENDER CHARGE AS OF BEGINNING OF POLICY YEAR
1	$29,700
2	28,535
3	27,371
4	26,195
5	25,013
6	23,825
7	22,643
8	21,461
9	20,279
10	19,097
11	17,909
12	16,691
13	11,578
14	7,059
15	3,182
16 AND THEREAFTER	0

SPECIAL NOTE: The current monthly cost of insurance rate is
person insured. In determining the monthly c
Insurance Cost, if any, shown in the Policy
anteed Maximum Life Insurance Rates will b
Specifications. The rates below are based or

ATTAINED AGE (nearest birthday)	MALE MONTHLY RATE	FEMALE MONTHLY RATE	ATTAINED AGE (nearest birthday)
0	0.34845	0.24089	35
1	0.08917	0.07251	36–
2	0.08251	0.06750	37
3	0.08167	0.06584	38
4	0.07917	0.06417	39
5	0.07501	0.06334	40
6	0.07167	0.06084	41
7	0.06667	0.06000	42
8	0.06334	0.05834	43
9	0.06167	0.05750	44
10	0.06084	0.05667	45
11	0.06417	0.05750	46
12	0.07084	0.06000	47
13	0.08251	0.06250	48
14	0.09584	0.06667	49
15	0.11085	0.07084	50
16	0.12585	0.07501	51
17	0.13919	0.07917	52
18	0.14836	0.08167	53
19	0.15502	0.08501	54
20	0.15836	0.08751	55
21	0.15919	0.08917	56
22	0.15752	0.09084	57
23	0.15502	0.09251	58
24	0.15169	0.09501	59
25	0.14752	0.09668	60
26	0.14419	0.09918	61
27	0.14252	0.10168	62
28	0.14169	0.10501	63
29	0.14252	0.10835	64
30	0.14419	0.11251	65
31	0.14836	0.11668	66
32	0.15252	0.12085	67
33	0.15919	0.12502	68
34	0.16669	0.13168	69

based on the sex, attained age (nearest birthday) and Premium Class of the st of insurance, the Company will add the amount of the Flat Extra Monthly Specifications. If the person insured is in a rated premium class, the Guar- those in the table multiplied by the Risk Factor, if any, shown in the Policy the 1980 CSO Tables (Male or Female as appropriate).

MALE MONTHLY RATE	FEMALE MONTHLY RATE
0.17586	0.13752
0.18670	0.14669
0.20004	0.15752
0.21505	0.17003
0.23255	0.18503
0.25173	0.20171
0.27424	0.22005
0.29675	0.23922
0.32260	0.25757
0.34929	0.27674
0.37931	0.29675
0.41017	0.31677
0.44353	0.33761
0.47856	0.36096
0.51777	0.38598
0.55948	0.41350
0.60870	0.44270
0.66377	0.47523
0.72636	0.51276
0.79730	0.55114
0.87326	0.59118
0.95591	0.63123
1.04192	0.66961
1.13378	0.70633
1.23235	0.74556
1.34180	0.78979
1.46381	0.84488
1.60173	0.91417
1.75809	1.00267
1.93206	1.10539
2.12283	1.21731
2.32623	1.33511
2.54312	1.45461
2.77350	1.57247
3.02328	1.69955

ATTAINED AGE (nearest birthday)	MALE MONTHLY RATE	FEMALE MONTHLY RATE
70	3.30338	1.84590
71	3.62140	2.02325
72	3.98666	2.24419
73	4.40599	2.51548
74	4.87280	2.83552
75	5.37793	3.19685
76	5.91225	3.59370
77	6.46824	4.01942
78	7.04089	4.47410
79	7.64551	4.97042
80	8.30507	5.52957
81	9.03761	6.17118
82	9.86724	6.91414
83	10.80381	7.77075
84	11.82571	8.72632
85	12.91039	9.76952
86	14.03509	10.89151
87	15.18978	12.08770
88	16.36948	13.35774
89	17.57781	14.70820
90	18.82881	16.15259
91	20.14619	17.71416
92	21.57655	19.43814
93	23.20196	21.40786
94	25.28174	23.83051

Table of Expense Charges

The following expenses are charged under this policy:

- An initial policy fee of $300.
- A monthly charge of $5 beginning on the Date of Issue.
- A charge of 5% of all premiums received.
- A fee of $25.00 for each partial surrender.

Premium and Reinstatement Provisions

Payment of Premiums. All premiums are payable at the Home Office or to an authorized agent of the Company. The first premium is due on the Date of Issue and is payable in advance. Subsequent premium payments may be made at any time before the Maturity Date. Receipts signed by the President or Secretary and duly countersigned will be furnished upon request.

Monthly Anniversary Days, policy months, policy years and policy anniversaries are computed from the Date of Issue.

Minimum Premiums. The Minimum Initial Premium as shown in the Policy Specifications for the Initial Specified Amount as of the Date of Issue is the amount required to prevent the policy from lapsing. Thereafter, the minimum premium is the amount required to maintain a positive surrender value as set forth under the "Grace Period" provision.

Planned Annual Premiums. The Company will send premium reminder notices for the amounts and frequency of payments established by the Owner. The Company reserves the right to stop sending such notices if no premium payment is made within 2 policy years. Changes in the amounts or frequency of such payments will be subject to consent of the Company.

Unscheduled Premiums. In addition to planned annual premiums, unscheduled premium payments of at least $100.00 each may be made before the Maturity Date. The Company reserves the right to limit the amount or number of any such unscheduled premium payments if such is necessary to qualify the policy as life insurance under the Internal Revenue Code.

Brace Period. If the surrender value on any Monthly Anniversary Day is less than the required monthly deduction, a grace period of 61 days will be granted to pay a premium sufficient to cover the required monthly deduction. (The surrender value and monthly deduction are described under "Nonforfeiture Provisions".) If, however, the Minimum Initial Premium requirement for the amounts and frequency as set forth in the Policy Specifications is met, the policy will not lapse during the Minimum Initial Premium period.

At least 31 days before the end of the grace period the Company will send a notice that there is insufficient cash value under the policy. The notice will show the amount of premium required to cover the monthly deduction to prevent the policy from lapsing and will be mailed to the last known addresses of the Owner and the assignee of record with the Company, if any. If such premium, as

billed by the Company, is not paid within the grace period, all coverage under the policy will terminate without value at the end of the grace period. If the Insured dies during the grace period, the company will deduct any overdue monthly deductions from the benefits.

Reinstatement. After the policy has lapsed due to the expiration of a grace period, it may be reinstated at any time prior to the Maturity Date provided: (a) it has not been surrendered for cash, (b) a written application for reinstatement is submitted to the Company, (c) evidence of insurability satisfactory to the Company is furnished, (d) enough premium is paid to keep the policy in force for at least 2 months, and (e) any indebtedness against the policy increased by any loan interest is paid or reinstated.

The effective date of the reinstated policy will be the Monthly Anniversary Day that coincides with or next follows the date the application for reinstatement is approved by the Company. The charges shown in the "Table of Surrender Charges" under this policy will be reinstated as of the policy year in which the policy lapsed.

Ownership, Assignment and Beneficiary Provisions

Owner. The Owner on the Date of Issue will be the person designated in the Policy Specifications. If no Owner is designated, the insured will be the Owner.

Rights of Owner. While the Insured is alive, the Owner may exercise all rights and privileges under the policy including the right to: (a) release or surrender the policy

to the Company, (b) agree with the Company to any change in or amendment to the policy, (c) transfer all rights and privileges to another person, and (d) assign the policy.

All rights and privileges of Owner may be exercised without the consent of any designated transferee, or any Beneficiary if the Owner has reserved the right to change the Beneficiary. All such rights and privileges, however, may be exercised only with the consent of any assignee recorded with the Company and the Beneficiary if the Owner has not reserved the right to change the Beneficiary.

Unless provided otherwise, if the Owner is a person other than the Insured and dies before the Insured, all the rights and privileges of Owner will vest in the Owner's executors, administrators or assigns.

Transfer of Owner. The Owner may transfer all rights and privileges of Owner. On the effective date of transfer, the transferee will become the Owner and will have all the rights and privileges of Owner. The Owner may revoke any transfer prior to its effective date.

Unless provided otherwise, a transfer will not affect the interest of any Beneficiary designated prior to the effective date of the transfer.

A transfer of Owner, or a revocation of transfer, must be in writing on a form satisfactory to the Company and filed at the Home Office. A transfer, or a revocation, will not take effect until recorded in writing by the Company. When a transfer or revocation has been so recorded, it will take effect as of the effective date specified by the

Owner. Any payment made or any action taken or allowed by the Company before the transfer, or the revocation, is recorded will be without prejudice to the Company.

Assignment. The Company will not be affected by any assignment of the policy until the original assignment or a certified copy of the assignment is filed at the Home Office.

The Company does not assume responsibility for the validity or sufficiency of any assignment. An assignment of the policy will operate so long as the assignment remains in force.

To the extent provided under the terms of the assignment, an assignment will transfer the interest of any designated transferee or of any Beneficiary if the Owner has reserved the right to change the Beneficiary.

Beneficiary. The Beneficiary on the Date of Issue will be the person designated in the Policy specifications.

Unless provided otherwise, the interest of any Beneficiary who dies before the Insured will vest in the Owner or the Owner's executors, administrators or assigns.

Change of Beneficiary. A new Beneficiary may be designated from time to time. A request for change of Beneficiary must be in writing on a form satisfactory to the Company and filed at the Home Office. The request must be signed by the Owner. The request must also be signed by the Beneficiary if the right to change the Beneficiary has not been reserved to the Owner.

A change of Beneficiary will not take effect until recorded in writing by the Company. When a change of Beneficiary

has been so recorded, whether or not the insured is then alive, it will take effect as of the date the request was signed. Any payment made or any action taken or allowed by the Company before the change of Beneficiary is recorded will be without prejudice to the Company.

Unless provided otherwise, the right to change any Beneficiary is reserved to the Owner.

Insurance Coverage Provisions

Effective Date of Coverage. The effective date of this policy will be the Date of Issue provided the initial premium has been paid while the insured is alive and prior to any change in health from that shown in the original application. This provision will not, however, affect the terms of any Temporary Insurance Agreement.

For any increase or addition to coverage, the effective date will be the Monthly Anniversary Day that coincides with or next follows the date the supplemental application is approved by the Company provided (a) sufficient cash value exists under the policy to cover the cost for the increase or (b) sufficient premium for the increase or addition has been paid.

For any insurance that has been reinstated, the effective date will be the Monthly Anniversary Day that coincides with or next follows the day the application for reinstatement is approved by the Company.

Termination of Coverage. All coverage under this policy will automatically terminate upon whichever of the following occurs first:

1. The Owner surrenders the policy.
2. The Insured dies.
3. The policy matures.
4. The grace period ends.

Any monthly deduction made after termination of coverage will not, by itself, be considered a reinstatement of the policy nor a waiver by the Company of the termination. Any such deduction will be refunded.

Death Benefit. If the Insured dies while the policy is in force, the Company will pay a death benefit based upon the Specified Amount Option in effect on the date of death, less (a) any indebtedness against the policy and (b) the amount of any partial surrenders. The Specified Amount Options available under this policy are as follows:

SPECIFIED AMOUNT OPTION A — The Insured's Specified Amount is in addition to the case value. The Insured's death benefit (before deduction of any indebtedness against the policy and the amount of any partial surrenders) will equal the greater of:

(a) the Specified Amount on the date of death plus the cash value on the date of death, or

(b) an amount determined by the Company equal to that required by the Internal Revenue Code to maintain this contract as a life insurance policy. any amount so determined will be set forth in the annual report which the Company will send to the Owner.

SPECIFIED AMOUNT OPTION B

The Insured's Specified Amount includes the cash value. The Insured's death benefit (before deduction of any indebtedness against the policy and the amount of any partial surrenders) will equal the greater of:

(a) the Specified Amount on the date of death, or

(b) an amount determined by the Company equal to that required by the Internal Revenue Code to maintain this contract as a life insurance policy. Any amount so determined will be set forth in the annual report which the Company will send to the Owner.

Unless the application for the policy indicates otherwise, or a change in the death benefit option is effected as provided below, the Company will consider Specified Amount Option B to be the option in effect.

Changes in Amount of Death Benefit. Unless provided otherwise, a change in death benefit may be effective under this policy, subject to (a) the consent of the Company and (b) the following conditions:

1. All such changes must be requested in writing on a form satisfactory to the Company and filed at the Home Office.

2. If a decrease in the Insured's Specified Amount is requested, the decrease will become effective on the Monthly Anniversary Day that coincides with or next follows receipt of the request provided any requirements as determined by the Company are met.

   In such event, the Company will reduce the existing Specified Amount against the most recent increase

first, then against the next most recent increased successively, and finally, against insurance provided under the original application; however, the Company reserves the right to limit the amount of any decrease so that the Specified Amount will not be less than the Minimum Specified Amount shown in the Policy Specifications.

3. If an increase in the Insured's Specified Amount is requested:

   (a) a supplemental application must be submitted and evidence of insurability satisfactory to the Company must be furnished; and

   (b) any other requirements as determined by the Company must be met.

   If the Company approves the request, the increase will become effective upon (i) the Monthly Anniversary Day that coincides with or next follows the date the request is approved by the Company and (ii) the deduction from the cash value of the first month's cost of insurance for the increase. An increase in amount will result in additional surrender charges and a new Table of Surrender Charges will be provided when such increase takes effect.

4. If a request is made to change the death benefit from Specified Amount Option A to Specified Amount Option B:

   (a) the Specified Amount will be increased to equal the death benefit as of the effective date of change; and

   (b) the effective date will be the Monthly Anniversary Day that coincides with or next follows the date of receipt of the request for change.

5. If a request is made to change the death benefit from Specified Amount Option B to Specified Amount Option A:

   (a) the Specified Amount will be reduced to equal the death benefit, less the cash value, as of the effective date of change; and

   (b) the effective date will be the Monthly Anniversary Day that coincides with or next follows the date of receipt of the request for change.

Projection of Benefits and Values. The Company will provide a projection of illustrative future death benefits and cash values at any time upon written request and payment of a reasonable service fee. The fee payable will be the one then in effect for this service. The illustration will be based on (a) assumptions as to Specified Amount(s), type of coverage option(s) and future planned annual premium payments, and (b) such other assumptions (e.g., mortality and interest) as are necessary and specified.

Nonforfeiture Provisions

Cash Value. On each Monthly Anniversary Day, the cash value will be calculated as (1), plus (2), plus (3), minus (4), where:

(1) is the cash value on the preceding Monthly Anniversary Day.

(2) is all premiums received since the preceding Monthly Anniversary Day less the percentage of premium expense charge from the "Table of Expense Charges".

(3) is interest on items (1) and (2).

(4) is the monthly deduction for the monthly following the Monthly Anniversary Day.

If premium is received at any time other than the beginning of a policy month, the rate of interest used in the calculation of item (3) above will be determined pro rata from the date of receipt.

On any day other than a Monthly Anniversary Day, the cash value will be the cash value as of the preceding Monthly Anniversary Day, plus all premiums received since the preceding Monthly Anniversary Day less the percentage of premium expense charge from the "Table of Expense Charges". The cash value on the Date of Issue will be the initial premium received less, in successive order, (i) the percentage of premium expense charge from the "Table of Expense Charges", (ii) the initial policy fee, and (iii) the monthly deduction for the then current policy month.

Net Cash Value. The net cash value as of any date shall equal the cash value on that date as determined above less any indebtedness against the policy.

Monthly Deduction. The monthly deduction for a policy month will be calculated as Charge (1) plus Charge (2) where:

CHARGE (1) is the cost of insurance (as described in the "Cost of Insurance" provision) and the cost of any additional benefits provided by rider for the policy month.

CHARGE (2) is the monthly expense charge from the "Table of Expense Charges".

Interest Rates. The Company will credit interest to the cash value of the policy on each Monthly Anniversary Day.

The interest rate applied to the net cash value of the policy will be the greater of:

(a) .32737% per month, compounded monthly (4% compounded yearly), or

(b) a rate determined by the Company from time to time. Such rate will be established on a prospective basis and may vary by the issue year and duration.

The monthly interest rate applied to that portion of the cash value which secures any outstanding policy loan when expressed as an equivalent annual rate shall be the greater of (a) 4% or (b) the policy loan rate (as described in the "Loan Interest" section) less a percentage no greater than 2%.

Cost of Insurance. The cost of insurance for the Insured is determined on a monthly basis. Such cost is calculated as (1), multiplied by the result of (2) minus (3), where:

(1) is the cost of insurance rate as described in the "Cost of Insurance Rates" provision,

(2) is the death benefit at the beginning of the policy month, divided by 1.0032737, and

(3) is the cash value at the beginning of the policy month prior to the deduction for the monthly cost of insurance.

Cost of Insurance Rates. Monthly cost of insurance rates will be determined by the Company, based on its expectations as to future mortality experience. Any change in cost of insurance rates will apply to all individuals of the

same class as the Insured. Under no circumstances will the cost of insurance rates ever be greater than those shown in the "Table of Guaranteed Maximum Life Insurance Rates". Such guaranteed maximum rates are based on the applicable Commissioners 1980 Standard Ordinary Mortality Table (age nearest birthday) modified by any flat extra or risk factors for the applicable premium class.

Insufficient Value. If the surrender value, on the day preceding a Monthly Anniversary Day is insufficient to cover the monthly deduction for the month following such Monthly Anniversary Day, the policy will terminate as provided in the "Grace Period" provision.

Basis of Computations. The minimum cash values under this policy are guaranteed to be no less than those calculated based on the applicable Commissioners 1980 Standard Ordinary Mortality Table (age nearest birthday) with interest at 4% per year, compounded yearly.

The cash values are at least equal to those required on the Date of Issue by the jurisdiction in which this policy is delivered. A detailed statement of the method of computing values has been filed with the insurance supervisory official of that jurisdiction.

Continuation of Insurance. In the event planned annual premium payments are not continued, insurance coverage under this policy and any benefits provided by rider will be continued until the surrender value is insufficient to cover the monthly deduction, as provided in the "Grace Period" provision. This provision will not continue the policy beyond the Maturity Date nor continue any rider beyond the date for its termination, as provided in the rider. At the Maturity Date, the Company will pay

the net cash value to the Owner if the Insured is then living.

Surrender and Surrender Value. This policy may be surrendered on any Monthly Anniversary Day during the lifetime of the Insured and before the Maturity Date. The amount payable on surrender of this policy (i.e., the "surrender value") will be the net cash value on the date of surrender less a charge determined from the "Table of Surrender Charges". (The charges shown in the table are the charges imposed at the beginning of the policy year; charges imposed upon surrender during the policy year will be determined on a consistent basis allowing for the lapse of time within such year.)

This surrender value will be paid in cash or under an elected optional mode of settlement. The Company may defer the payment of the surrender value for the period permitted by law, but not for more than 6 months from the date of request for surrender.

If surrender is requested under this section within 30 days after a policy anniversary, the surrender value will not be less than the surrender value on that anniversary, less any policy loans or partial surrenders made on or after such anniversary.

Partial Surrender. A partial surrender of this policy may be elected on any Monthly Anniversary Day during the lifetime of the Insured and prior to the Maturity Date by submitting written request to the Company. The amount of the partial surrender (a) must be at least $500.00 but (b) may not exceed 90% of the then current surrender value.

When a partial surrender is made, the amount of the partial surrender will be deducted from the cash value. Also, the death benefit (under either Specified Amount Option A or B) will be reduced by the amount of the partial surrender. Under Option B, the Specified Amount will be reduced by the amount of the partial surrender. The Specified Amount remaining in force after any partial surrender will be subject to the limits and minimum amount described in the "Changes in Amount of Death Benefit" provision.

A fee as set forth in the "Table of Expense Charges" will be deducted for each partial surrender. The Company reserves the right to limit the number of partial surrenders in a policy year. The Company also reserves the right to defer payment for the period permitted by law, but not for more than 6 months from the date of request for the partial surrender, unless such partial surrender amount is to be applied to the payment of premiums on policies with the Company.

LOAN PROVISIONS

Policy Loans. After a cash surrender value is available, the Company will grant a loan against the policy provided: (a) a proper loan agreement is executed and (b) a satisfactory assignment of the policy to the Company is made. The policy will be the sole security for the loan. The total amount of all loans with interest may not exceed the surrender value of the policy.

The Company may defer a loan for 6 months from the date of the request for the loan. The Company will not,

however, defer a loam to be used to pay premiums on policies with the Company.

Loan Interest. Interest on any policy loan will be at a rate no greater than 8% per year payable in arrears. Loan interest is payable annually on each policy anniversary or as otherwise agreed in writing by the Owner and the Company. Interest not paid when due will then be added to the loan and bear interest at the same rate. Interest, as it accrues from day to day will constitute an indebtedness.

Indebtedness. The term "indebtedness" means money which is owed on this policy because of a loan on this policy. Any indebtedness at time of settlement will reduce the proceeds. Indebtedness may be repaid in whole or in part at any time before the policy matures. If, however, a premium is not paid within the grace period, any outstanding indebtedness can be repaid only if the policy is reinstated.

If at any time the total indebtedness against the policy, including interest accrued but not due, equals or exceeds the then current cash value, the policy will thereupon terminate without value subject to the conditions in the "Grace Period" provision.

GENERAL PROVISIONS

The Policy. The policy and the application for the policy (including any supplemental applications for additional Specified Amounts) constitute the entire contract between the parties. All statements made in the application will, in the absence of fraud, be deemed representations and not

warranties. No statement will be used in defense of a claim under the policy unless it is contained in the application, and a copy of the application is attached to the policy when issued.

Only the President, a Vice President, a Secretary, a Director or an Assistant Director of the Company may make or modify this policy.

The policy is executed at the Home Office of the Company, the Post Office address of which is Hartford, Connecticut.

Non-Participation. The policy is not entitled to share in surplus distribution.

Payment of Proceeds. Proceeds, as used in this policy, means the amount payable (a) on the Maturity Date, (b) upon the surrender of this policy before the Maturity Date, or (c) upon the death of the insured.

The proceeds payable upon receipt of due proof of the Insured's death will be the Insured's death benefit less (a) any indebtedness against the policy and (b) the amount of any partial surrenders. If the policy is surrendered before the Maturity Date, the proceeds will be the surrender value described in the "Nonforfeiture Provisions" section. On the Maturity Date, the proceeds will be the net cash value. The proceeds are subject to the adjustments described in the following provisions:

1. Misstatement of age;
2. Incontestablility;
3. Suicide;
4. Partial Surrender;

5. Grace Period; and

6. Indebtedness.

When settlement is made, the Company may require return of the policy.

Misstatement of Age. If the age of the Insured is misstated, the Company will adjust all benefits to the amounts that would have been purchased for the correct age according to the basis specified in the "Table of Guaranteed Maximum Life Insurance Rates".

Suicide. If the Insured commits suicide, while sane or insane, within 2 years from the Date of Issue, the death benefit will be limited to a refund of premiums paid, less (a) any indebtedness against the policy and (b) the amount of any partial surrenders. If the Insured commits suicide, while sane or insane, within 2 years from the effective date of any increase in the Specified Amount, the death benefit payment with respect to such increase will be limited to a refund of the monthly charges for the cost of such insurance.

Incontestability. Except for nonpayment of monthly deductions, this policy will be incontestable after it has been in force during the Insured's lifetime for 2 years from its Date of Issue. This means that the Company will not use any material misstatement in the application to challenge a claim or avoid liability after that time. Any increase in the Specified Amount effective after the Date of Issue will be incontestable only after such increase has been in force for 2 years during the Insured's lifetime.

The basis for contesting an increase in Specified Amount will be limited to material misrepresentations made in the

supplemental application for the increase. The basis for contesting after reinstatement will be (a) limited for a period of 2 years from the date of reinstatement and (b) limited to material misrepresentations made in the reinstatement application.

Annual Report. The Company will send a report to the Owner at least once a year without charge for such a report. The report will show (a) the current death benefit, (b) the current net cash value, (c) premiums paid and all deductions made since the last report, and (d) outstanding policy loans.

Change of Plan. This policy may be exchanged for another policy only if the Company consents to the exchange and all requirements for the exchange as determined by the Company are met.

Optional Methods of Settlement

This rider is made part of the policy to which it is attached as of the Date of Issue.

Upon written request, the Company will agree to pay in accordance with any one of the options shown below all or part of the net proceeds that may be payable under the policy. If (a) the proceeds to be settled under any option are less than $2,500, (b) any installment or interest payment is less than $25, or (c) any payee is a corporation, partnership, association, trustee or assignee, such options will be available only with the Company's consent.

While the Insured is alive, the request may be made by the Owner. Unless otherwise specified in writing by the

Owner, such a request may also be made by the Beneficiary, after the Insured's death provided it is made prior to any payment.

Option A: Annuity Certain. A definite number of equal installments or their equivalent will be payable. The first payment will be payable on the date proceeds are settled under the option. The amount of each instalment [sic] will be determined from the Option A Table. The Option A Table is based on a guaranteed interest rate of 3% per year compounded annually.

Option B: Life Annuity with Certain Period. A definite number of equal monthly instalments [sic] or their equivalent, and as long thereafter as the payee lives, will be payable. The first payment will be payable on the date proceeds are settled under the option. The amount of each instalment [sic] will be determined from the Option B Table based on the payee's sex and settlement age. The settlement age shown in the Option B Table will be the payee's age, nearest birthday, on the date the first amount is paid modified as follows:

Calendar Year in which the first instalment [sic] is payable	Settlement Age of Payee is age nearest birthday plus
Before 1900	3
1900-1999	2
2000-2009	1
2010 and later	0

The Option B Table is based on a guaranteed interest rate of 3.5% per year compounded annually.

Option C: As a Deposit at Interest. The Company will retain the proceeds while the payee is alive and will pay interest annually thereon at a rate of not less than 3% per year. Upon the payee's death, the amount on deposit will be paid.

Option D: Instalments [sic] Until Proceeds are Exhausted. Instalments [sic] of specified amounts will be payable until the proceeds with any interest thereon are exhausted. The first instalment [sic] will be payable on the date proceeds are settled under the option. The instalment [sic] amounts must be at least $120 per year per $1,000 of the proceeds retained. Interest will be payable at a rate of not less than 3% per year compounded annually.

Additional Options. Any proceeds payable under the policy may also be settled under any other method of settlement offered by the Company at the time of the request.

Excess Interest. At the sole discretion of the Company, excess interest may be paid or credited from time to time in addition to the payments guaranteed under any Optional Method of Settlement.

Connecticut General Life Insurance Company

/s/ Laurence P. English
PRESIDENT

Optional Methods of Settlement (Continued)

Option A Table For Each $ 1,000 Retained

Number of years during which instalments will be paid	Amount of each instalment		Number of years during which instalments will be paid	Amount of each instalment		Number of years during which instalments will be paid	Amount of each instalment	
	Annual	Monthly		Annual	Monthly		Annual	Monthly
1	$1,000.00	$84.47	9	$124.69	$10.53	16	$77.29	$6.53
2	507.39	42.86	10	113.82	9.61	17	73.74	6.23
3	343.23	28.99	11	104.93	8.86	18	70.59	5.96
4	261.18	22.06	12	97.54	8.24	19	67.78	5.73
5	211.99	17.91	13	91.29	7.71	20	65.26	5.51
6	179.22	15.14	14	85.95	7.26	25	55.76	4.71
7	155.83	13.16	15	81.33	6.87	30	49.53	4.18
8	138.31	11.68						

Option B Table For Each $1,000 Retained

Settlement age of payee nearest birthday		Number of instalments certain				Settlement age of payee nearest birthday		Number of instalments certain				Settlement age of payee nearest birthday		Number of instalments certain			
		60	120	180	240			60	120	180	240			60	120	180	240
Male	Female					Male	Female					Male	Female				
	10*	$3.16	$3.16	$3.16	$3.15	32	37	$3.67	$3.66	$3.65	$3.64	59	64	$5.47	$5.34	$5.15	$4.91
	11	3.17	3.17	3.17	3.16	33	38	3.70	3.70	3.69	3.67	60	65	5.59	5.45	5.24	4.97
	12	3.18	3.18	3.18	3.17	34	39	3.74	3.73	3.72	3.70	61	66	5.71	5.56	5.33	5.03
	13	3.19	3.19	3.19	3.18	35	40	3.77	3.77	3.75	3.74	62	67	5.85	5.68	5.42	5.10
	14	3.20	3.20	3.20	3.20	36	41	3.81	3.80	3.79	3.77	63	68	5.99	5.80	5.51	5.16
10*	15	3.21	3.21	3.21	3.21	37	42	3.85	3.84	3.83	3.81	64	69	6.15	5.93	5.61	5.21
11	16	3.23	3.22	3.22	3.22	38	43	3.89	3.88	3.87	3.84	65	70	6.31	6.07	5.70	5.27
12	17	3.24	3.24	3.24	3.23	39	44	3.94	3.93	3.91	3.88	66	71	6.48	6.21	5.80	5.33
13	18	3.25	3.25	3.25	3.25	40	45	3.99	3.97	3.95	3.92	67	72	6.66	6.35	5.90	5.38
14	19	3.27	3.27	3.26	3.26	41	46	4.03	4.02	4.00	3.96	68	73	6.86	6.50	6.00	5.43
15	20	3.28	3.28	3.28	3.27	42	47	4.09	4.07	4.05	4.00	69	74	7.07	6.66	6.10	5.48
16	21	3.30	3.30	3.29	3.29	43	48	4.14	4.13	4.09	4.05	70	75	7.29	6.83	6.19	5.52
17	22	3.31	3.31	3.31	3.31	44	49	4.20	4.18	4.14	4.09	71	76	7.52	7.00	6.29	5.56
18	23	3.33	3.33	3.33	3.32	45	50	4.26	4.24	4.20	4.14	72	77	7.77	7.17	6.38	5.60
19	24	3.35	3.35	3.34	3.34	46	51	4.32	4.30	4.25	4.18	73	78	8.04	7.35	6.47	5.63
20	25	3.37	3.37	3.36	3.36	47	52	4.39	4.36	4.31	4.23	74	79	8.32	7.53	6.55	5.66
21	26	3.39	3.38	3.38	3.38	48	53	4.46	4.43	4.37	4.28	75	80	8.62	7.71	6.63	5.68
22	27	3.41	3.40	3.40	3.40	49	54	4.53	4.49	4.43	4.34	76	81	8.94	7.89	6.71	5.70
23	28	3.43	3.43	3.42	3.42	50	55	4.61	4.56	4.49	4.39	77	82	9.28	8.07	6.78	5.72
24	29	3.45	3.45	3.44	3.44	51	56	4.69	4.64	4.55	4.44	78	83	9.63	8.25	6.84	5.73
25	30	3.47	3.47	3.47	3.46	52	57	4.77	4.71	4.62	4.50	79	84	10.00	8.43	6.89	5.74
26	31	3.50	3.49	3.49	3.48	53	58	4.85	4.79	4.69	4.55	80	85**	10.39	8.60	6.94	5.74
27	32	3.52	3.52	3.51	3.51	54	59	4.94	4.87	4.76	4.61	81		10.80	8.77	6.98	5.75
28	33	3.55	3.54	3.54	3.53	55	60	5.04	4.96	4.84	4.67	82		11.22	8.93	7.01	5.75
29	34	3.58	3.57	3.57	3.56	56	61	5.14	5.05	4.91	4.73	83		11.66	9.08	7.04	5.75
30	35	3.60	3.60	3.59	3.58	57	62	5.24	5.14	4.99	4.79	84		12.12	9.21	7.06	5.75
31	36	3.64	3.63	3.62	3.61	58	63	5.35	5.24	5.07	4.85	85**		12.60	9.34	7.07	5.75

* and under

** and over

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

POLICY AMENDMENT. The policy is hereby amended by the addition of the following provision:

Formula For Surrender Charges. The surrender charges for this policy are deducted from the cash value upon surrender. The surrender charges apply from the Date of Issue of the policy and from the effective date of any increase in Specified Amount. The surrender charge calculated as of each policy anniversary is A times B times C where A, B, and C are defined as follows:

A is the difference between the Expense Allowance and the initial policy fee. The Expense Allowance is based on the age of the Insured on the Date of Issue or on the date of an increase in Specified Amount and is the Expense Allowance Per Thousand of Specified Amount shown in Table B on the reverse times the initial Specified Amount or increase in Specified Amount. The initial policy fee is the fee shown on page 8 of the policy but is zero for an increase in Specified Amount.

B is X divided by Y where X and Y are defined as follows:

X is the present value of an annuity for one dollar payable annually beginning on the current anniversary of the Issue of the policy or the current anniversary of the effective date of an increase in Specified Amount and ending on the nineteenth anniversary of the Issue of the policy or the nineteenth anniversary of an increase in Specified Amount.

Y is the present value of an annuity for one dollar payable annually beginning on the Date of Issue or the effective date of increase in Specified Amount and ending on the nineteenth anniversary of the Date of Issue of the policy or the nineteenth anniversary of the effective date of an increase in Specified Amount.

All present values are based on the applicable 1980 CSO Mortality Table and 4% interest.

C is the durational factor shown in Table A below.

The surrender charges applicable between anniversaries are determined by linear interpolation between the surrender charges applicable at the last and next anniversaries.

This rider is attached to and forms a part of the policy as of its Date of Issue and is to take effect on such date. Except as specifically altered by this rider, all of the provisions and conditions of the policy remain in full force and effect.

TABLE A

DURATIONAL FACTORS

Policy Year	Surrender Charge Durational Factor at end of Policy Year
1	1.00
2	1.00
3	1.00

4	1.00
5	1.00
6	1.00
7	1.00
8	1.00
9	1.00
10	1.00
11	1.00
12	0.75
13	0.50
14	0.25
15	0.00
16 and thereafter	0.00

/s/ Laurence P. English
PRESIDENT

TABLE B

Factors for Calculation of Surrender Charges

AGE	EXPENSE ALLOWANCE PER $1000 OF SPECIFIED AMOUNT	
	MALE	FEMALE
0	$14.47	$13.62
1	14.45	13.63
2	14.58	13.75
3	14.73	13.86
4	14.90	13.98
5	15.06	14.12
6	15.23	14.26
7	15.42	14.41
8	15.62	14.57
9	15.83	14.73
10	16.06	14.91
11	16.30	15.08
12	16.55	15.27
13	16.80	15.47
14	17.06	15.67
15	17.31	15.88
16	17.58	16.11
17	17.85	16.33
18	18.12	16.57
19	18.41	16.82
20	18.70	17.08
21	19.01	17.35
22	19.32	17.63
23	19.67	17.92
24	20.02	18.23
25	$20.41	$18.56
26	20.82	18.90
27	21.25	19.26
28	21.71	19.63
29	22.20	20.02
30	22.71	20.43
31	23.25	20.87
32	23.82	21.33
33	24.43	21.81
34	25.07	22.31
35	25.75	22.85
36	26.46	23.40
37	27.21	23.98
38	28.00	24.60
39	28.83	25.23
40	29.71	25.91
41	30.62	26.61
42	31.60	27.35
43	32.62	28.11
44	33.70	28.92
45	34.83	29.76
46	36.03	30.65
47	37.31	31.58
48	38.65	32.57
49	40.07	33.62
50	$41.58	$34.71
51	43.18	35.87
52	44.88	37.10
53	46.68	38.40
54	48.58	39.77
55	50.00*	41.22
56		42.76
57		44.40
58		46.15
59		48.02
60		50.00*

* AND THEREAFTER UNTIL POLICY MATURITY DATE

CONNECTICUT GENERAL LIFE INSURANCE COMPANY
HARTFORD, CONNECTICUT

POLICY AMENDMENT

The "Death Benefit" provision of the policy is hereby amended as follows:

As of the Date of Issue of this policy the formula in effect under item (b) of both Specified Amount Option A and Specified Amount Option B is the following:

(i) If death occurs on or before age 40, 250% of the cash value on the date of death.

(ii) If death occurs after age 40, a percent of the cash value on the date of death as determined from the following table:

Attained Age (Nearest Birthday)	Percentage	Attained Age (Nearest Birthday)	Percentage
41	243%	61	128%
42	236	62	126
43	229	63	124
44	222	64	122
45	215	65	120
46	209	66	119
47	203	67	118
48	197	68	117
49	191	69	116
50	185	70	115
51	178	71	113
52	171	72	111
53	164	73	109
54	157	74	107
55	150	75-90	105

56	146	91	104
57	142	92	103
58	138	93	102
59	134	94	101
60	130	95	100

This rider is to be attached to and forms a part of the policy as of its date of issue and is to take effect on such date. Except as specifically altered by this rider, all of the provisions and conditions of the policy remain in full force and effect.

/s/ Laurence P. English
PRESIDENT

APPENDIX E

CIGNA Securities, Inc.

[LOGO]

FINANCIAL PLANNING SERVICES ONE YEAR CONTRACT

Financial Planning Services Contract Between CIGNA Securities, Inc., a registered investment advisor ("Advisor") and the client named below.

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1. GENERAL PURPOSE.

   By this contract, you engage Advisor to provide personal financial planning services for a period of one year as described below, and Advisor agrees to provide these services.

2. SERVICES TO BE PROVIDED.

   During the term of this contract Advisor will provide planning services in the areas specified below. Planning services will be summarized by a written plan for you which reflects your current financial circumstances, your financial outlook and your personal objectives.

[X] Estate Planning	[ ]Fringe Benefit Planning
[ ] Business Continuity Planning	[ ]Income Tax Planning
[X] Retirement Planning	[ ]Investment Planning

3. PLANNING WILL FOLLOW THIS PROCESS.

   In creating your plan, you and Advisor will follow this process:

   a. Data: You will provide Advisor with financial and personal data necessary to prepare your plan.

b. Analysis: Advisor will analyze data and documents provided, evaluate your ability to meet your objectives, make observations, identify problems and recommend strategies for your consideration.

c. Written Plan: On the basis of the data you provide and the objectives chosen, Advisor will prepare and present a personal financial plan summarized in written form.

4. COMPENSATION TO ADVISOR FOR PLANNING SERVICES.

For the financial planning services described above, you agree to pay a fee of $ 1250.00.

(Continued on reverse)

This financial planning contract is agreed to between us, effective 4-24-91 (*Date*) at MIDLAND, TEXAS (*City/State*).

Name of Client John R. Kirwan
Social Security Number 441-20-7200
Name of Client Carolyn Kirwan
Social Security Number 085-24-2537
Street 400 West Texas; 1216 Vaughn Bldg
City Midland State TX Zip 79701
Phone: Bus. 915-682-8619 Home 915-684-4191
Client Signature /s/ John R. Kirwan
Client Signature /s/ Carolyn Kirwan

By /s/ Kathy J. Hughes
Authorized Representative
By /s/ Illegible
Authorized Representative

5. IMPLEMENTATION OF YOUR FINANCIAL PLAN.

The services of advisor under this contract are limited to recommending strategies for you to consider to achieve your financial objectives. We will at your request, facilitate and coordinate the necessary steps to implement your plan in conjunction with your attorney, accountant and other pertinent advisors. However our services are analytical and advisory only and do not include any legal, accounting or other professional services.

Implementation of product related recommendations is not included under this financial planning contract. If you desire, CIGNA Securities, Inc. and its affiliates, acting in a sales capacity, will recommend specific investments, insurance or other financial products through which your plan can be specifically implemented. The purchase of such products normally results in the payment of commissions. There is no additional fee for this service.

6. RENEWAL OF YOUR FINANCIAL PLAN.

At the end of the term of this contract, you may engage Advisor to provide financial services for an additional year. Advisor will determine the renewal fee based on services to be provided. Both you and Advisor retain the right not to renew this contract.

7. MAJOR REVISIONS.

If at any time your Plan requires a major revision (resulting, for example, from the sale of a business or a divorce) an additional fee may be charged. We will quote this fee to you and receive your consent to it in advance of performing any work on the revision.

8. RECEIPT OF DISCLOSURE BROCHURE.

You acknowledge receipt of Advisor's Disclosure Brochure. This Disclosure Brochure has been prepared and delivered in accordance with the Investment Adviser's Act of 1940 and the rules thereunder. It contains important information concerning the background and organization of Advisor and its key people. It also describes possible conflicts of interest. You should be aware of the multiple roles which CIGNA Securities, Inc. and its affiliates play as financial advisor and as issuer, investment manager and/or broker with respect to various financial products.

9. NO RIGHT OF ASSIGNMENT.

Advisor may not assign this contract, as that term is defined in the Investment Adviser's Act of 1940.

10. RIGHT TO TERMINATE.

You have the right to terminate this contract without penalty at any time within five business days after the effective date of this contract. To effect termination you must notify Advisor in writing.

11. ENTIRE AGREEMENT AMENDMENT.

This contract constitutes the entire agreement between us. It may be amended only by a written agreement signed by you and by an officer of Advisor.

12. NOTICES.

All notices and other communications hereunder shall be in writing.

FILED
SEP 11 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(2)

No. 98-278

IN THE
Supreme Court of the United States
October Term, 1997

IN THE MATTER OF:
VMS LIMITED PARTNERSHIP
SECURITIES LITIGATION

JOHN R. KIRWAN, CAROLYN KIRWAN,
THE JOHN R. KIRWAN TRUST,
CAROLINE SUSAN KIRWAN
and KATHLEEN MARY KIRWAN,

Petitioners.

Petition for A Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

J. Kevin McCall
Jeffrey T. Shaw*
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

**Counsel of Record*

28 pp

QUESTIONS PRESENTED

1. Whether certiorari should be granted to review the issues presented by petitioners, where (a) no circuit court decision--not even the unpublished court of appeals decision in this case--has ever addressed either of the questions on the merits; and (b) there is no indication that either of the questions involves important issues that recur in class action litigation with any frequency.

2. Whether certiorari should be granted to review the case-specific questions presented concerning the adequacy of the settlement notice at issue, where the court of appeals held that petitioners waived the issues raised in the certiorari petition, and where under the circumstances of this case the notice sufficiently identified the released parties and the released claims in any event.

PARTIES TO THE PROCEEDINGS BELOW

The parties in the court of appeals were: (1) the petitioners listed in the caption, who were plaintiffs-appellants in the court below; and (2) the following entities, which appeared as defendants-appellees in the court of appeals and which appear as respondents in this Court: CIGNA Securities, Inc., CIGNA Corporation, CIGNA Individual Financial Services Company, Insurance Company of North America, and CIGNA Realty Resources, Inc.-Sixth.

PARENT COMPANIES AND NON-WHOLLY OWNED SUBSIDIARIES

CIGNA Corporation is the ultimate parent company of respondents CIGNA Securities, Inc., CIGNA Individual Financial Services Company, Insurance Company of North America, and CIGNA Realty Resources, Inc.-Sixth. CIGNA Securities, Inc. and CIGNA Individual Financial Services Company have merged and been succeeded by CIGNA Financial Advisors, Inc., whose immediate parent formerly was Connecticut General Corporation. The stock of CIGNA Financial Advisors, Inc. was recently transferred to Lincoln National Life Insurance Company, although any potential liability in this case has been retained by CIGNA Corporation or the affiliated entities identified in this paragraph. Insurance Company of North America and CIGNA Realty Resources, Inc.-Sixth are wholly owned subsidiaries of INA Financial Corporation and CIGNA Financial Partners, Inc., respectively. This litigation also involves the interests of Connecticut General Life Insurance Company, whose parent is Connecticut General Corporation.

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IN THE

Supreme Court of the United States

October Term, 1997

No. 98-278

IN THE MATTER OF:
VMS LIMITED PARTNERSHIP
SECURITIES LITIGATION

JOHN R. KIRWAN, CAROLYN KIRWAN,
THE JOHN R. KIRWAN TRUST,
CAROLINE SUSAN KIRWAN
and KATHLEEN MARY KIRWAN,

Petitioners.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

BRIEF IN OPPOSITION

Petitioners ask this Court to grant certiorari to review an unpublished court of appeals decision--and to issue sweeping constitutional declarations on issues that no circuit court has ever considered--to remedy a situation that has not been shown to be of recurring concern to litigants. Contrary to petitioners' contentions, this Court does not address broad constitutional questions in the abstract--and in the absence of a decisional conflict or any showing that the questions presented are of recurring importance to litigants. That is particularly true here,

where the court of appeals expressly *declined* to reach the questions that petitioners seek to bring to this Court on the ground that they had not been preserved or presented for appellate review. Thus, because petitioners have not shown that the questions presented warrant review, and because this case is an especially inappropriate vehicle for consideration of those questions in any event, the petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

The petition arises from the district court's decision to enforce an injunction that was entered in May 1993 as part of a final judgment approving a partial class settlement. The injunction, which covered all class members who did not submit timely opt-out requests, expressly barred settling class members from bringing claims that had been released as part of the settlement. AA218-222. On February 12, 1997, the district court enforced that injunction against petitioners and barred them from prosecuting a Texas state court proceeding that asserted released claims. AA1-5.[1/]

1. The Underlying *VMS* Litigation.

The partial class settlement at issue was reached in multidistrict litigation entitled *In re VMS Ltd. Partnership Sec. Litig.*, MDL No. 847, No. 90 C 2412 (N.D. Ill.). The *VMS* litigation has included over 50 cases, many of which were class actions brought by various investors against numerous defendants, including CIGNA Securities, Inc. (later known as CIGNA Financial Advisors, Inc.) ("CIGNA") and certain

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1/ Citations are to the appendix that accompanied respondents' brief in the court of appeals.

entities and individuals affiliated with CIGNA. *See generally* AA7 (Settlement Notice describing multidistrict litigation). The settlement at issue related only to the claims against CIGNA and its Affiliates and Associates.[2/]

On February 2, 1993, after ruling on a number of substantive motions, the district court granted preliminary approval to a proposed settlement of all class claims against the settling CIGNA defendants and their Affiliates and Associates. AA8. One of the classes of plaintiffs included in the settlement was the "Financial Planning Class," which consisted of all persons who had entered into a financial planning agreement with CIGNA for a fee. AA6.

2. The Class Notice Provided To Petitioners.

On February 23, 1993, a court-approved Notice describing the proposed settlement was sent to members of the certified classes. AA6-13. With respect to members of the Financial Planning Class, the Notice explained who were members (AA6) and what claims had been alleged on behalf of the class. The Notice stated that the claims to be released arose from CIGNA's financial planning advice to the class. AA7. The underlying complaint alleged that the CIGNA defendants "were affiliates as part of a nationwide, major insurance and securities company in the business of selling insurance and securities" and complained that the advice provided pursuant to the financial planning contracts was designed to induce the class to purchase products from CIGNA and its Affiliates. AA194 ¶¶ 11-21.

2/ As discussed below, Connecticut General Life Insurance Company, one of the defendants in the Texas action, is a CIGNA Affiliate. Kathleen Hughes, the other defendant in the Texas action, is a CIGNA Associate.

The Notice was sent by first-class mail to persons who were listed on the books and records of CIGNA as having entered into financial planning contracts with CIGNA during the relevant time period. In addition, pursuant to the district court's order, a court-approved Notice of the settlement was published in the national edition of *The Wall Street Journal* on March 4, 1993. AA98.

Petitioners John R. and Carolyn Kirwan entered into a financial planning contract with CIGNA in April 1991 for a fee of $1,250. AA81-82. Accordingly, petitioners were members of the Financial Planning Class, and a copy of the Notice was sent to "John R. & C. Kirwan" at petitioners' last known address in Midland, Texas. AA84.

The Notice explained how the Kirwans could exclude themselves from the settlement if they did not wish to participate. In a section entitled "How To Exclude Yourself From The Classes," the Notice stated that all class members "have the right . . . to exclude [themselves] or 'opt out' of the Classes," but only by submitting an exclusion request by the required date. AA8. The Notice further defined "Settling Class Members" as "all members of the Classes who do not request exclusion" and stated that persons who did not opt out would release claims against all "CIGNA Entities." AA8, AA9. The Notice defined "CIGNA Entities" to include "Affiliates" and "Associates." AA6. In a section entitled "Release of Claims," the Notice provided that, upon final approval of the settlement, Settling Class Members would be deemed to have released their claims against the CIGNA Entities, on behalf of themselves and their "successors" or "assigns." AA9.

In defining "Released Claims," the Notice specified that the claims being released included "any and all" claims relating to "policies" purchased from or through any CIGNA Entity, and "any and all" claims relating to financial advice received from or through any CIGNA Entity (AA9; emphasis added):

> "Released Claims" means any and all claims, actions, allegations, causes of action, demands, defenses, counter-claims, set-offs (both legal and equitable), rights of liabilities whatsoever--including, but not limited to, known and unknown claims in connection with, arising out of, or in any way relating to any acts, facts, transactions, occurrences, representations, or omissions that have been or might have been asserted in [the consolidated actions]--that in any way arise from or relate to . . . any financial planning or investment advice provided by or involving any CIGNA Entity, *to any other securities, investments, policies, or products that were purchased from or through any CIGNA Entity, or to any other securities, investments, policies, or products with which any CIGNA Entity has or had any involvement or role whatsoever*.

The Notice also warned that the district court would enter an injunction prohibiting the litigation of Released Claims in any other proceeding or forum (AA9):

> As part of the order finally approving the proposed settlement, the Court will enter an injunction prohibiting Settling Class Members from asserting or continuing to prosecute in any other action, arbitration, or proceeding any claims released as part of the settlement.

Finally, the Notice described a claim form procedure for members of the Financial Planning Class who wished to share

in the settlement proceeds. AA8. The Notice made clear that Financial Planning Class members who did not submit a Claim Form would not receive any share of the settlement funds, although as class members who did not opt out, they would still be bound by the settlement and the release of claims. AA8, AA9.

Petitioners do not deny that they are members of the Financial Planning Class and that John and Carolyn Kirwan received the Settlement Notice that was mailed to them. *See* AA100, AA106-07. They likewise conceded in the court of appeals that they did not opt out (*see* Appellants' 4/25/97 Br. 4, 5), and it is undisputed that they failed to submit a Claim Form.

3. Approval Of The Settlement And The Injunction.

After holding a hearing, on May 21, 1993, the district court entered final judgment approving the settlement. AA218-222. As part of its judgment, the district court entered an injunction prohibiting Settling Class Members "from asserting or continuing to assert any of the Released Claims in any court or forum." AA220. The court retained jurisdiction for the purpose of effectuating and enforcing the injunction and the other provisions of the final judgment. AA222.

4. The Texas Lawsuit.

On or about August 30, 1996, petitioners commenced a lawsuit in state court in Houston, Texas against a CIGNA Affiliate, Connecticut General Life Insurance Company ("Connecticut General"), and a CIGNA Associate, Kathleen J. Hughes. *John R. Kirwan, et al. v. Connecticut General Life Insurance Company, et al.*, No. 96-44674 (Dist. Ct., Harris County, Texas). Ms. Hughes was a representative of CIGNA

and its Affiliate, Connecticut General. *See* AA58-59. The claims in the Texas action arose from advice provided pursuant to the CIGNA financial planning contract, as a result of which petitioners purchased a life insurance policy through Connecticut General and Ms. Hughes in October 1991. *See* AA70-71.

5. The Enforcement Proceedings In The District Court.

Because petitioners' claims in the Texas action sought damages as a result of plaintiffs having invested in a life insurance policy in accordance with advice that Ms. Hughes provided pursuant to the CIGNA financial planning agreement, those claims were encompassed by the claims made in the *VMS* financial planning lawsuit, and by the definition of Released Claims in the Settlement Notice and Settlement Agreement entered into in that litigation. As a result, on November 19, 1996, CIGNA and the other CIGNA Settling Defendants asked the district court to enjoin petitioners from pursuing Released Claims in the Texas action or elsewhere. *See* AA56-98. In their motion to enjoin, the CIGNA Settling Defendants demonstrated that the Kirwans were Settling Class Members bound by the settlement; that the trustees and the Trust were "successors" or "assigns" of the Kirwans whose claims were also released in the settlement; that plaintiffs' claims relating to the insurance policy all fell within the definition of Released Claims under the settlement; and that Connecticut General and Ms. Hughes were a CIGNA Affiliate and a CIGNA Associate, and thus, CIGNA Released Persons under the settlement. AA56-98.

In opposing CIGNA's motion, petitioners did not deny that the Kirwans were Financial Planning Class Members who had received the Settlement Notice. *See* AA99-102, AA106-07.

Petitioners likewise did not deny that Connecticut General and Ms. Hughes were CIGNA Released Persons under the settlement. *See* AA99-102. Nor did petitioners dispute that the definition of Released Claims included claims relating to "policies" purchased from or through CIGNA Affiliates and Associates. Instead, petitioners contended, in a conclusory form, that: (1) the Notice and release did not specify "life insurance" policies; (2) petitioners purportedly were "unaware" of their insurance policy-related claims; (3) the Trust and trustees were not sent a separate Notice; (4) petitioners did not receive a settlement distribution, and thus, purportedly received no consideration for the release of their claims; and (5) petitioners' decision to opt out of a settlement in a different, later-filed class action brought against Connecticut General in California somehow prevented them from being bound by the settlement in the Illinois action. AA96-102. In this Court, petitioners seek review of only the first contention raised in the district court and one additional issue raised for the first time on appeal. *See* Pet. i (Question Two).[3/]

6. The District Court's Ruling.

On February 12, 1997, the district court granted the CIGNA Settling Defendants' motion and entered an injunction prohibiting petitioners from continuing to pursue any of the claims in the Texas action. Pet. App. 11-13. The court stated: "The Kirwans are members of the Financial Planning Class

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3/ The question of whether the Notice is defective because it did not specifically name one of the Released Persons, Connecticut General, was not raised until proceedings in the court of appeals. As a result, the court of appeals held petitioners' contention to have been waived and therefore did not address that issue on the merits. Pet. App. 5. We address the merits of that issue in Section IIB below.

which settled here. They did not opt out. Under the terms of the settlement this [failure to opt out] releases their claims and those of successors and assignees." Pet. App. 11. Observing that "[t]he basic facts which underlie Cigna's motion are not disputed" (Pet. App. 12), the district court proceeded to explain why each of petitioners' arguments lacked merit. With respect to the contention that petitioners raise in this Court--that the Notice was inadequate because it did not specify the release of "life" insurance policy claims, the district court held that "[t]here is no weight to the argument that the failure to mention 'life' insurance policies is a flaw in the notice." The court pointed out that "[t]he notice did refer to policies" and rejected petitioners' theory that the phrase "'any policies' does not include life policies." *Id.* The district court further held that petitioners' claims were barred because their claims arose from their financial planning agreement and the resulting advice (Pet. App. 12-13):

> The relationship which is the subject of the Kirwan's Texas lawsuit is the financial planning and estate planning advice they got from Cigna and this, as they tell us in the Texas lawsuit, was the suggestion to buy this policy.

7. Seventh Circuit Proceedings.

On appeal, petitioners submitted an opening brief containing less than four pages of argument (Appellants' 4/25/97 Br. 7-11), and a reply brief containing only six more pages of argument (Appellants' 6/13/97 Br. 1-6). In addition to making the same conclusory contentions that they made in the district court, petitioners raised for the first time the argument that they were entitled to relief because the Notice did

not identify Connecticut General as a Released Person by name, but only as an Affiliate. Appellants' 4/25/97 Br. 8.

After briefing and oral argument, the court of appeals issued an unpublished order affirming the district court. Pet. App. 1-7. In that order, the court rejected the two issues that petitioners raise in their certiorari petition without reaching either one on the merits. With respect to the first issue, that the Notice petitioners received was inadequate because it did not mention Connecticut General by name, the court of appeals declined to consider that contention because it had been raised for the first time on appeal. Pet. App. 5. With respect to the second issue, that the Notice supposedly was wanting because it did not adequately identify the claims being released, the court of appeals similarly rejected that argument because it was too conclusory: "We would consider whether [the district court's conclusion "that the language in the settlement agreement covering 'policies' included 'life insurance policies'"]--although it seems sensible--was an abuse of discretion if the appellants suggested any reason why it was, but they do not." Pet. App. 7.

REASONS FOR DENYING THE WRIT

The petition should be denied because the constitutional questions presented by petitioners have not been shown to have ever been considered by any circuit court on the merits, have not been shown to be of substantial or recurring importance to litigants, and could not affect the result in this case in any event.

1. The questions presented concern abstract issues of constitutional law that do not warrant review by this Court. There is no showing by petitioners that those questions have provoked any disagreement among the lower federal courts.

Indeed, petitioners have not cited any circuit court opinion that has even considered either of the questions presented. The unpublished court of appeals decision in this case is no exception: because petitioners failed to adequately preserve or present the questions presented for appellate review, the court of appeals declined to reach them on the merits.

In light of the absence of decisional law addressing the issues presented, it will come as no surprise that petitioners also have failed to show that the issues are so substantial or of such recurring importance that they demand this Court's attention. Instead, petitioners appear to assert that certiorari review is appropriate to address the adverse effects that the court of appeals' unpublished decision has on their claims in this case. That is fatal to the petition: It is axiomatic that this Court does not issue sweeping constitutional declarations merely to relieve a particular set of litigants of the adverse consequences of a single--and here, unpublished--lower court determination.

2. Even if the questions presented otherwise warranted consideration, certiorari review nonetheless should be denied because this case does not supply an appropriate vehicle for their resolution. Because of petitioners' inadequate presentation of the issues below, the court of appeals refused to reach them. As a result, this Court has neither the benefit of the circuit court's reasoning on the merits of the issues presented, nor a full record from which to evaluate petitioners' contention that they did not have adequate notice that their claims were being released. Before this Court determines the necessity of promulgating new constitutional rules such as those advocated by petitioners, the Court should await a case that frames the problem less abstractly.

In addition, this case warrants no further review because the result here would be the same no matter how the questions presented are resolved. In light of petitioner's failure to abide by the most rudimentary rules of appellate adjudication--particularly those concerning the preservation and presentation of grounds for review--the court of appeals plainly was justified in holding that petitioners waived their arguments. And no conceivable injustice flows from that determination because, on the merits, the Notice at issue fairly apprised petitioners of the release of their claims. The Notice, which petitioners indisputably received, expressly disclosed the release of "any and all" claims relating to "policies" purchased through any CIGNA "Affiliate" or "Associate," as well as all claims relating to financial planning advice provided by CIGNA and its Affiliates and Associates. Petitioners' claims in the Texas lawsuit arose directly from financial planning advice that petitioners received from someone who they knew was a CIGNA broker and Associate, and the resulting purchase of the insurance policy was from a company that petitioners knew was a CIGNA Affiliate. Petitioners therefore were not deprived of any of their rights by the injunction in this case, and for that additional reason, certiorari review would be inappropriate.

I. THE QUESTIONS PRESENTED DO NOT WARRANT THIS COURT'S REVIEW.

Certiorari review should be denied because petitioners have not shown that either of the questions presented for review merits consideration by this Court. To the contrary, the questions are ones that have provoked no disagreement among the lower courts, and indeed, scarce interest among litigants.

A. There Is No Lower Court Conflict On The Questions Presented.

Petitioners have not shown that the unpublished court of appeals decision in this case conflicts with the decision of any other court. *See, e.g., Sanchez v. Borras*, 283 U.S. 798, 798-99 (1931) (dismissing writ as improvidently granted because of lack of circuit conflict); *accord Wisconsin Elec. Co. v. Don Dumore Co.*, 282 U.S. 813, 813 (1931); *Keller v. Adams-Campbell Co.*, 264 U.S. 314, 319-20 (1924); *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 392-93 (1923). Nor could petitioners point to any such conflict, given that the court of appeals rejected the issues presented in this case without addressing them on the merits, on the ground that petitioners failed to adequately preserve or present them for appellate review.

Not only have petitioners failed to demonstrate a conflict between the unpublished court of appeals decision and some other decision, but they also have failed to point to *any* disagreement among other court decisions on either of the questions presented. Thus, it appears that the petitioners are asking this Court to decide those questions on a clean slate, without the benefit of the reasoning of any prior decision.[4/]

4/ Indeed, petitioners are now raising contentions that they did not present to *either* court below. Specifically, in the course of arguing that the Notice was inadequate because it stated that claims involving "policies" were released, but failed to state specifically that this term included "insurance policies," petitioners further contend that the Notice should have disclosed that claims involving the "churning" of insurance policies were being released. Pet. 10-12. Petitioners never made that argument below--either in the district court or the Seventh Circuit. In any event, as we explain in Section IIB below, petitioners' claims *are* related to the financial planning advice petitioners received--indeed, as the district court held, the claims arise

It would be an understatement to say that the questions presented by petitioners would benefit from further--indeed, any--consideration by the lower courts. *Cf. McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J., concurring in denial of certiorari) ("it is a sound exercise of discretion for the Court to allow the various states to serve as laboratories in which the issue receives further study before it is addressed by this Court"). Review of those questions should, at a minimum, await at least *some* consideration in the lower courts before this Court determines the necessity of confronting those issues.

B. The Questions Presented Are Not Of Substantial Or Recurring Importance.

Petitioners have not shown that the questions presented involve issues of substantial or recurring importance. The general constitutional benchmarks governing the adequacy of notices such as that at issue here have long been settled by this Court. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950). Petitioners have failed to establish any pressing need for this Court to reiterate those settled principles, or to supplement them with the new *per se* constitutional rules that petitioners ask this Court to adopt. Indeed, petitioners have pointed to no case even raising the problem this Court is urged to address. Thus, addressing the questions presented "would be of no importance save to the litigants themselves," which is insufficient to warrant Supreme Court review. *See, e.g., Rudolph v. United States*, 370 U.S. 269, 270 (1962); *see also United States v. Johnston*, 268 U.S. 220,

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directly from "the financial planning and estate planning advice they got from Cigna." Pet. App. 12.

227 (1925) (Holmes, J.) ("We do not grant a certiorari to review evidence and discuss specific facts.").

In sum, reduced to its essence, the petition for a writ of certiorari in this case is an appeal for a new set of *per se* constitutional rules that no court has considered, without any showing by petitioners that review of the questions presented is important or necessary. Moreover, petitioners seek to have those rules declared based on a set of factual assumptions that was neither proved nor developed in any way in the courts below. Those factors establish that certiorari review is inappropriate, as Justice Frankfurter's opinion for the Court in *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955), further confirms:

> A federal question raised by a petition may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. "Special and important reasons" imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

Petitioners have offered no reason why this case is exempt from those principles, and thus, no reason why certiorari should not be denied.

II. THIS CASE IS AN INAPPROPRIATE VEHICLE FOR SUPREME COURT REVIEW IN ANY EVENT.

Even if certiorari review were otherwise warranted by the importance of the questions presented, which it is not, review should be denied because this case is not an appropriate vehicle for deciding those questions. This case is unsuitable for review because: (1) petitioners waived their contentions by failing to properly raise them in the court below; and (2) on the merits, petitioners had adequate notice of the release of their claims.

A. Petitioners Waived The Questions Presented Below And Thereby Deprived This Court Of The Record Necessary For Proper Consideration Of Those Questions.

This case is not an appropriate vehicle for consideration of the questions presented because those questions were inadequately presented in, and therefore not reached by, the court below. Pet. App. 5. That by itself supplies an appropriate basis for denying review. *See, e.g., Springfield v. Kibbe,* 480 U.S. 257, 259 (1987) (dismissing petition as improvidently granted because issue was not raised below: "We ordinarily will not decide questions not raised or litigated in the lower courts"); *see also Newsom v. Smyth,* 365 U.S. 604, 604-05 (1961); *California v. Taylor,* 353 U.S. 553, 557 n.2 (1957).

Petitioners' waiver is no mere technicality, but a serious impediment to further review because that waiver has deprived this Court of the benefit of any lower court reasoning and of a full record for evaluating the constitutional claims presented by petitioners. By their failure to adequately present their arguments to the court below, petitioners have deprived this Court of the details of what they actually knew and did not

know about the release of their claims. The inadequacy of the record that is the product of petitioners' waiver further demonstrates that this case comes to this Court in a posture that is not suitable for review. *See, e.g., Johnson v. Massachusetts,* 390 U.S. 511, 511-12 (1968) (dismissing petition as improvidently granted because, in light of fact that petitioner did not raise the constitutional issue below, "the record relevant to the constitutional claim now asserted is insufficient to permit decision of those claims"); *Massachusetts v. Painten,* 389 U.S. 560, 561 (1968) (dismissing petition because "the record is not sufficiently clear and specific to permit decision of the important constitutional questions involved in this case"); *Smith v. Mississippi*, 373 U.S. 238, 238 (1963) (dismissing petition because "the record is not sufficient to permit decision of [the] constitutional claims"); *Kimbrough v. United States*, 364 U.S. 661, 661 (1961) (dismissing petition because the question on which certiorari was granted "is not presented with sufficient clarity in this case"); *Oliphant v. Brotherhood of Locomotive Firemen & Enginemen,* 359 U.S. 935, 935 (1959) (denying certiorari "[i]n view of the abstract context in which the questions sought to be raised are presented by this record"); *Rescue Army v. Municipal Court,* 331 U.S. 549, 584-85 (1947) (dismissing appeal because record did not present constitutional question in sufficiently "clean-cut and concrete form").[5/]

5/ As is demonstrated in the section that follows, insofar as the record reveals what petitioners knew or did not know, the record shows that petitioners in fact had adequate notice of the release of their claims.

B. Petitioners Had Adequate Notice Of The Release Of Their Claims.

This case is inappropriate for certiorari review for one more reason: Regardless of how the questions presented are resolved, the result in this case would be the same. As shown above, the court of appeals rejected petitioners' contentions not on the merits, but because they had been waived. Pet. App. 5. That holding would support the decision below however this Court might rule on the questions presented.

On the merits, the Notice that petitioners indisputably received comported with due process, in that it fairly apprised petitioners of the parties and claims to be released. With respect to released parties, the Notice specifically included "CIGNA Affiliates" as Released Persons. Although petitioners attempt to leave the contrary impression, nowhere in their certiorari petition or in any of their briefs below have petitioners ever stated outright that they were unaware that Connecticut General was a CIGNA Affiliate. Petitioners could not make such a claim, given that they purchased their Connecticut General life insurance policy from a CIGNA broker, as a result of financial and estate planning advice that she was providing under the financial services contract that petitioners entered into with CIGNA. Indeed, as the district court in this case found, the recommendation that petitioners buy the life insurance policy arose in the context of the "financial planning and estate planning advice they got from Cigna." Pet. App. 12.

Moreover, a key document, which petitioners confirmed they received at the time they entered into their financial planning contract, *affirmatively establishes* that petitioners have known all along of the affiliation between CIGNA and

Connecticut General. Specifically, in their financial planning services contract with CIGNA (which is annexed to the petition), petitioners, like every other member of the Financial Planning Class, "acknowledge[d] receipt of Advisor's Disclosure Brochure [which] . . . contains important information concerning the background and organization of Advisor and its key people," including "the multiple roles which CIGNA Securities, Inc. and its affiliates play as financial advisor and as issuer, investment manager and/or broker with respect to various financial products." Pet. App. 50. On Page One, in a section called "Who we are," the Disclosure Statement reveals in clear and unmistakable terms the direct affiliation between CIGNA and Connecticut General (AA207; emphasis added):

> CIGNA Securities, Inc. is an investment advisor and securities brokerage firm registered with the Securities and Exchange Commission and appropriate state securities authorities. It is a wholly-owned affiliate of CIGNA Corporation. CIGNA Corporation, with over $50 billion in assets is one of the largest shareholder-owned financial services companies in the world. *CIGNA provides a wide variety of financial and investment services through such subsidiaries as Connecticut General Life Insurance Company and Insurance Company of North America.*[6/]

In light of petitioners' knowledge that Connecticut General was a CIGNA Affiliate, petitioners' complaint about the Notice's failure to reference Connecticut General by name is baseless.

6/ Petitioners did not provide the above quoted Disclosure Statement with their petition, but that Disclosure Statement is attached as an exhibit to the Financial Planning Class complaint and therefore is part of the record in this litigation. *See* AA190, AA206-209.

Petitioners' attempt to derive a due process violation from the way released claims were designated fares no better because the Notice specifically released claims involving "policies." Although it did not address the issue, the court of appeals noted that the district court's holding that this disclosure was adequate "seems sensible." Pet. App. 7.

Petitioners' contrary contention--that claims involving "insurance policies" are not encompassed by a release of claims involving "policies"--strains not only common English usage, but credulity. Petitioners indisputably knew that they were members of the Financial Planning Class and that the claims of that class were being released. As the district court held, petitioners' life insurance claims arose from the financial planning advice that they received from CIGNA. Pet. App. 12-13. Petitioners purchased the life insurance policy at issue from a CIGNA Associate, Ms. Hughes, pursuant to the financial planning contract between CIGNA and petitioners, which specifically provided that recommended "insurance or other financial products" could be purchased from "CIGNA . . . and its affiliates." Pet. App. 49. And as shown above, petitioners knew from the Disclosure Statement that they received in connection with their financial planning contract that Connecticut General was a CIGNA Affiliate.

In sum, the facts stand directly in the way of petitioners' contention that they had no idea that the underlying release relating to the Financial Planning Class would have implications for their life insurance claims. Those claims arose directly from the financial planning advice that petitioners received from CIGNA and pertain to an insurance policy issued by an entity that petitioners knew was a CIGNA Affiliate. The Notice at issue thus was more than adequate to apprise petitioners of the

release of their claims, and for that additional reason, this case is unsuited for Supreme Court review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

J. Kevin McCall
Jeffrey T. Shaw*
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

**Counsel of Record*

Dated: September 11, 1998

Supreme Court, U.S.
FILED
SEP 25 1998
OFFICE OF THE CLERK

(3)

No. 98-278

In The

Supreme Court of the United States

October Term, 1997

IN THE MATTER OF:

VMS LIMITED PARTNERSHIP
SECURITIES LITIGATION

JOHN R. KIRWAN, CAROLYN KIRWAN,
THE JOHN R. KIRWAN TRUST,
CAROLINE SUSAN KIRWAN
and KATHLEEN MARY KIRWAN,

Petitioners.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

DAVID L. SHELLER
Counsel of Record
DAVID L. SHELLER & ASSOCIATES
Texas Bar No. 18193700
440 Louisiana, Suite 1550
Houston, Texas 77002
(713) 961-0291
(713) 961-5112 – FAX

Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

41PP

QUESTIONS PRESENTED IN THE PETITION

1. Whether certiorari should be granted so that the Supreme Court may consider whether the absence of a settling defendant's name in a notice of class action settlement is unreasonable per se since it fails to provide adequate notice of the release of claims against that defendant in violation of the Due Process Clause of the Fourteenth Amendment.

2. Whether certiorari should be granted so that the Supreme Court may consider whether the blanket release of claims unrelated to the cause of action made the primary subject matter of a class action settlement is unreasonable per se because it fails to provide adequate notice of claims and causes of action being waived in violation of the Due Process Clause of the Fourteenth Amendment.

QUESTIONS PRESENTED IN THE BRIEF IN OPPOSITION

1. Whether the adequacy of notice of a class action settlement required by the Due Process Clause of the Fourteenth Amendment is an important question of federal law which recurs frequently enough in class action litigations that it should be settled by this Court.

2. Whether the specific and necessary nature of the information omitted from the class settlement notice at issue makes this case an appropriate vehicle for consideration of the foregoing questions despite the Court of Appeals' error in holding that the Petitioners waived the issue.

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TO THE HONORABLE JUDGES OF SAID COURT:

COME NOW Petitioners, JOHN R. KIRWAN, CAROLYN KIRWAN, THE JOHN R. KIRWAN TRUST, CAROLINE SUSAN KIRWAN and KATHLEEN MARY KIRWAN ("the Kirwans" or "Petitioners") and reply to Respondents' Brief in Opposition to the Petition for Writ of Certiorari, and would respectfully show the Court as follows:

ARGUMENTS FOR GRANTING WRIT

1. The adequacy of notice of a class action settlement required by the Due Process Clause of the Fourteenth Amendment is an important question of federal law which recurs frequently enough in class action litigations that it should be settled by this Court.

Respondents claim that the notice requirement of the Due Process Clause of the Fourteenth Amendment is not important enough to be addressed by this Court or that, if it is, the issue has long been settled by this Court. Indeed, nearly half a century ago the Court set forth the mandate of due process that notice must be reasonably calculated to apprise interested parties of the pendency of the action. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). However, the issue has not been put to rest. Various lawsuits continue to present questions regarding the adequacy of due process notice, particularly where the rights and claims of class members are being released. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S.

156 (1974); *In re Auto-Train Corp.*, 810 F.2d 270 (D.C. Cir. 1987); *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996).

Certiorari should be granted in this case so that the Supreme Court may consider whether the blanket release of claims unrelated to the cause of action made the primary subject matter of a class action and the absence of a settling defendant's name in a notice of class action settlement is unreasonable per se since it fails to provide adequate notice of the release of claims and causes of action in violation of the Due Process Clause of the Fourteenth Amendment. The Supreme Court should make it clear that the Due Process Clause of the Fourteenth Amendment requires that a notice of class action settlement must adequately inform class members of the claims and causes of action they are waiving and specifically inform class members of the identity (*i.e.*, name) of each defendant which the settlement is releasing so the class members may adequately evaluate their interests in the proposed settlement.

2. The specific and necessary nature of the information omitted from the class settlement notice at issue makes this case an appropriate vehicle for consideration of the foregoing question despite the Court of Appeals' error in holding that the Petitioners waived the issue.

a. Contrary to the Court of Appeals' holding, Petitioners did not waive the adequacy of notice issue, because the issue was addressed in the Kirwans' Response to Defendants' Motion to Enjoin.

In the original pleading filed by the Kirwans in the U.S. District Court for the Northern District of Illinois, Respondent, John R. Kirwan, et al.'s Response to Defendant's Motion to Enjoin, the Kirwans argued that the notice of the class action settlement did not inform them that they would be releasing claims against Connecticut General Life Insurance Company for "churning." *See* Respondent, John R. Kirwan, et al.'s Response to Defendant's Motion to Enjoin, Appendix "A." In paragraph number 3, the Response states, "The notice does not describe the fact that the purchasers of life insurance from Connecticut General Life Insurance Company are included in the class." Also, in paragraph number 6, the Response says, "The notice . . . regarding financial planning does not mention life insurance." These assertions in the Kirwans Response to Defendant's Motion to Enjoin are enough to preserve error for appeal. *See Estelle v. Gamble*, 429 U.S. 97 (1976) (slight allegation in a petition filed *pro se* was enough to preserve error). Therefore, the U.S. Court of Appeals for the Seventh Circuit erred in holding that the adequacy of notice issue had been waived. The Kirwans raised this issue in the District

Court, and both the District Court and the Court of Appeals ignored the issue.

Under the holding of *Estelle v. Gamble*, the issue of inadequate notice was adequately preserved for appeal and for consideration by this Court. Nevertheless, although the Supreme Court does not normally decide issues that are not presented in the courts below, it is not precluded from doing so. *See Carlson v. Green*, 446 U.S. 14, 17 n.2 (1980); *Youakim v. Miller*, 425 U.S. 231 (1976). The cases of *Carlson* and *Youakim* hold that issues not necessarily presented in the district court or the court of appeals may be decided by the Supreme Court, and nothing precludes the Supreme Court from addressing the issues presented for the first time in a petition for writ of certiorari. Because this is an important recurring question of federal law, the Court should address the adequacy of notice issue on its merits.

b. The Kirwans did not receive adequate notice that their claims against Connecticut General Life Insurance Company for the "churning" of insurance policies would be released by the settlement with CIGNA.

The name of parties being released in a settlement and notice of the specific claims being waived are necessary elements of due process. On February 23, 1993, a settlement notice from the U.S. District Court for the Northern District of Illinois was sent to members of several classes involved in the *VMS Limited Partnership Securities Litigation*, including a Financial Planning Class of

which, solely by virtue of the April 1991 financial planning agreement with CIGNA Securities, Inc., Mr. and Mrs. Kirwan were members. A summary of the settlement notice was published in the *Wall Street Journal* on March 4, 1993. The notice did not advise class members that Connecticut General Life Insurance Company was included as a settling defendant, nor did the notice advise class members that separate claims for unrelated activities such as "churning" insurance policies would be released.

The claims asserted by the Kirwans in the Texas action arose from a separate and distinct transaction, which was specifically excluded from being part of the financial planning agreement made the subject of the *VMS Limited Partnership Securities Litigation*. The Kirwans' purchase of life insurance from Connecticut General Life Insurance Company in October 1991 was not part of the Financial Planning Services Contract which was subject to the Release of Claims contemplated in the *VMS Limited Partnership Securities Litigation* class settlement notice. Nothing in the life insurance contract or the life insurance application connects that purchase of life insurance to any financial plan or financial planning service of CIGNA Securities, Inc., or any arrangement between CIGNA and the Kirwans.

If the reasoning of the Seventh Circuit Court of Appeals and Judge Zagel were correct, the entire separate class action against Connecticut General Life Insurance Company filed in California should have been enjoined by the original VMS Limited Partnership class action. It was not. Why not? If that is what the parties contemplated, why did the John R. Kirwan Trust and the

Trustees not receive notice in the VMS Limited Partnership class action as they did in the Connecticut General class action? This is a travesty of justice, and, with the proliferation of class actions and class action settlements, definitive minimum standards for class notices should be established by the U.S. Supreme Court so the little persons class actions are designed to help receive their due process.

CIGNA admits, at page 4 of its Brief in Opposition, that **only** members of the financial planning class received notice. There is no evidence, no testimony, no documents and no affidavits which show that the Kirwans' purchase of life insurance was related to the financial planning made the subject of the VMS Limited Partnership Securities Litigation. This assertion by CIGNA is not supported by any evidence. The Kirwans did purchase an interest in a VMS Limited Partnership, but the insurance purchase occurred six months after the financial planning contract was signed and was a separate contract altogether. The Court of Appeals' decision ignores the sanctity of separate contracts. The CIGNA notice contradicts the plain language of the Financial Planning Agreement and puts the Kirwans in the unenviable position of deciding which language controls, if they had known they needed to make such a decision. This is especially true since the Financial Planning Agreement's unambiguous language specifically excluded the purchase of life insurance.

The sale of life insurance to the Kirwans was sheer fraud designed to allow the agent, Kathleen Hughes, to earn huge commissions by cashing in the Kirwans' old policies. This transaction was clearly detrimental to the

Kirwans because, as a person gets older, new policies are more expensive and there are new commissions, new surrender charges and new administrative costs, all of which stop the buildup of cash values (cash accumulation) and the compounding of interest on those cash values.

The most fundamental requirements of due process in any proceeding which is to be accorded finality is that notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). The notice must be of such a nature as to reasonably convey to the parties the required information. *Mullane*, 339 U.S. at 314. Moreover, the class notice sent to plaintiffs in a class action should sufficiently describe both the action and the plaintiffs' rights in it. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). A notice which does not identify the defendant or the specific claims being released does not sufficiently describe the action or the plaintiffs' rights therein.

The Connecticut General class action notice proves that a notice containing the name of the defendants and an adequate explanation of the class claims works. *See* Class Notice in *Alan B. Spitz et al. v. Connecticut General Life Insurance Company*, No. CV 95-3566 HLH (Ex.), in the United States District Court for the Central District of California, attached as Exhibit "A" to Respondent, John R. Kirwan, et al.'s Response to Defendant's Motion to Enjoin, Appendix "A." When the Kirwans received the Connecticut General class action notice, they found out

for the first time that they had been defrauded by Connecticut General Life Insurance Company, and they chose to exercise their right to opt out of the class and pursue an individual lawsuit.

CONCLUSION

The Seventh Circuit Court of Appeals' decision, and Judge Zagel's order enjoining the Texas action, should be overruled for the reasons stated herein and to clarify the minimum requirements of due process.

WHEREFORE, PREMISES CONSIDERED, Petitioners JOHN R. KIRWAN, CAROLYN KIRWAN, THE JOHN R. KIRWAN TRUST, CAROLINE SUSAN KIRWAN and KATHLEEN MARY KIRWAN respectfully request that this Honorable Court grant their Petition for Writ of Certiorari in this matter and for all such other and further relief, both at law and in equity, to which the Kirwans may be justly entitled.

Respectfully submitted,

David L. Sheller
David L. Sheller & Associates
Texas Bar No. 18193700
440 Louisiana, Suite 1550
Houston, Texas 77002
(713) 961-0291
(713) 961-5112 – FAX

Attorney for Petitioners

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:	)	
VMS LIMITED PARTNERSHIP SECURITIES LITIGATION	)	**C.A. NO. 90 C 2412**
	)	**JUDGE JAMES B. ZAGEL**
Consolidated Pretrial Proceeding	)	

RESPONDENT, JOHN R. KIRWAN, ET AL'S RESPONSE TO DEFENDANT'S MOTION TO ENJOIN

TO THE HONORABLE UNITED STATES DISTRICT JUDGE ZAGEL:

Respondent, John R. Kirwan, would respectfully show unto the Court the following:

1. There is a class action pending directly against Connecticut General Life Insurance Company in the United States District Court for the Central District of California pertaining to life insurance. All of the Kirwan parties, which CIGNA is attempting to enjoin in this lawsuit, have chosen to opt out of the other class action as shown by the notice and the opt our letter attached as Exhibits "A," and "B." This class action clearly pertains to the life insurance obtained by Mr. Kirwan. If, indeed, GICNA's Motion to Enjoin was true and correct, then this class action should have been enjoined. CIGNA's Motion to Enjoin is blatantly frivolous and is a complete violation of Rule 11 F.R.C.P.

2. The notice was not sent to the John R. Kirwan Trust, or to Caroline Susan Kirwan, as Trustee, as shown by Exhibits "C" and "D," attached hereto.

3. The notice does not describe the fact that purchasers of life insurance from Connecticut General Life Insurance Company are included in the class. The Kirwans were unaware they had a life insurance claim when they received the VMS documents.

4. The case of *Wagner v. Nutrasweet Co.*, 873 F. Supp. 87 (N.D.Ill. 1994), holds at page 98:

> Prospective claims not yet in existence or "within the contemplation of the parties" cannot be waived by signing a general release. *See Riley v. American Family Mutual Insurance Co.*, 881 F.2d 368, 371 N. 6 (7th Cir. 1989) ("prospective waivers are unenforceable"); *Fair v. International Flavors & Fragrances*, 905 F.2d 1114, 1115 (7th Cir. 1990) (noting that "courts should not recognize general releases of claims not known or contemplated by the parties at the time of the release"); *Goodman v. Epstein*, 582 F.2d 388, 402 N. 42 (7th Cir. 1978) ("any attempt to release a claim in futuro is invalid"). *See also International Insurance Co. v. Sargent & Lundy*, 242 Ill.App.3d 614, 609 N.E.2d 842, 182 Ill. Dec. 308 (1st Dist. 1993) (general releases apply only to claims in existence at the time the release is executed; claims arising subsequent to execution are discharged only by a "clear expression of intent to that effect"); *Chubb v. Amax Coal Co., Inc.*, 125 Ill.App.3d 682, 686, 80 Ill. Dec. 917, 466 N.E.2d 369 (5th Dist. 1984) (same). . . .

See also *Village of Fox River Grove Illinois v. Grayhill, Inc.*, 806 F. Supp. 785, 795 (N.D.Ill. 1992).

THE RELEASE IS LIMITED

5. The Case of *Aircrash Disaster at Cove Neck Long Island, N.Y.*, 885 F. Supp. 434 (E.D.N.Y. 1995) holds at page 442: "If the language of an instrument limits the release to certain claims, 'then the release will be operative as to those matters only.' *Herman v. Malamed*, 110 A.D.2d 575, 487 N.Y.2d 791, 793 (1st Dep't. 1985) (citing *Lanni v. Smith*, 89 A.D.2d 782, 453 N.Y.S.2d 497 (4th Dep't.1982), *appeal withdrawn*, 65 N.Y.2d 925 (1985)).

6. The notice attached as Exhibit "C2" to Connecticut General's Motion regarding financial planning does not mention life insurance. Nor does the contract signed by John Kirwan and Caroline Kirwan with Kathleen Hughes for Financial Planning Services mention life insurance. See Exhibit "E". The language of Exhibit "C2" describes financial planning and investment advice. The Court can take judicial notice of the fact that insurance and investment advice regarding stocks and bonds require different licensures and are separate and distinct entitles.

7. The Release of Life Insurance was executed without valid consideration. The case of *Bank One, Texas, N.A. v. Taylor*, 970 F.2d 16 (5th Cir. 1992) holds at page 22: "If it is determined that a release was executed without valuable consideration, it nay be invalidated. *Victoria Bank*, 779 S.W.2d at 903; *McClellan v. Boehmer*, 700 S.W.2d 687, 693 (Tex. App. – Corpus Christi 1985, no writ). Mr. Kirwan never received any consideration for the alleged relief of Connecticut General Life Insurance Company.

WHEREFORE, Respondent, John R. Kirwan, respectfully requests this Honorable Court enter an Order denying Connecticut General's Motion to Enjoin, and for all such other relief, both at law and in equity, to which Respondent may be justly entitled.

Respectfully submitted,

/s/ David L. Sheller
David L. Sheller
TBA NO. 18193700
9 Greenway Plaza, Suite 3028
Houston, Texas 77046
(713) 961-0291
(713) 961-5112-FAX

Attorney for John R. Kirwan, et al

OF COUNSEL:

Peter Coladarci
State Bar No. 18435
135 South LaSalle
Chicago, Illinois 60603
(312) 541-2626
(312) 641-0727 - FAX

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to opposing counsel pursuant to the Texas Rules of Civil Procedure, as follows:

Allister Waldrop — **Via Hand Delivery**
Baker & Botts
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995

Ellen R. Kordik — **Certified Mail/RRR**
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611
via the following manner:

Hand Delivery and/or Certified Mail/RRR

this the 12th day of December, 1996.

/s/ David L. Sheller
David L. Sheller

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:	)	
VMS LIMITED PARTNERSHIP SECURITIES LITIGATION	)	**C.A. NO. 90 C 2412**
	)	**JUDGE JAMES B. ZAGEL**
Consolidated Pretrial Proceeding	)	

AFFIDAVIT OF DAVID L. SHELLER

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared DAVID L. SHELLER, and after being duly sworn by me, deposed and stated as follows:

> "My name is David L. Sheller. I am over 18 years of age, and have never been convicted of a felony or crime of moral turpitude. I am of sound mind and otherwise competent to execute this Affidavit, and the facts stated herein are based upon my personal knowledge.
>
> I am an attorney licensed to practice law in the State of Texas, the State of Alabama, the United States District Court for the Southern District of Texas, and the United States Supreme Court. I have been licensed to practice since 1979, and I am board certified in personal injury trial law by the Texas Board of Legal Specialization. I am the attorney of record for John R. Kirwan, et al in the case styled above.

The following exhibits to Respondent, John R. Kirwan, et al's Response to Defendant's Motion to Enjoin are exact duplicates of documents provided to me in the regular course of my representation of the Kirwans, which I have filed or caused to be filed in my files for the case at or near the time the documents were provided to me in the course of my representation of the Kirwans;

Exhibit A: Class Notice

Exhibit B: Opt Out Letter

Exhibit C: Notification to John R. Kirwan

Exhibit D: Notification to Caroline Kirwan

Exhibit E: Contract for Financial Planning Services

Further, affiant sayeth not.

/s/ David L. Sheller
David L. Sheller

SWORN TO AND SUBSCRIBED BEFORE ME by the said David L. Sheller, on this the 12th day of December, 1996, to certify which witness my official hand and seal of office.

/s/ Sharon Kelly
Notary Public – State of Texas

[SEAL]

NO. 96-44674

JOHN R. KIRWAN AND CAROLYN KIRWAN, INDIVIDUALLY AND CAROLINE SUSAN KIRWAN AND KATHLEEN MARY KIRWAN, AS TRUSTEES OF THE OF THE [SIC] JOHN R. KIRWAN, TRUST	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
CONNECTICUT GENERAL LIFE INSURANCE COMPANY AND KATHLEEN J. HUGHES, INDIVIDUALLY AND AS AGENT FOR CONNECTICUT GENERAL LIFE INSURANCE COMPANY	)	189TH JUDICIAL DISTRICT

AFFIDAVIT OF JOHN R. KIRWAN

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. KIRWAN, who deposed and stated as follows:

> "My name is John R. Kirwan. I am a resident of Midland, Midland County, Texas. I have personal knowledge of the facts stated herein, and I know them to be true and correct.

"The court should note that there is another class action versus Connecticut General specifically for the sale of life insurance which all parties named in the Motion to Enjoin has opted out of as shown by the letters attached to the Response. My trust and trustee were also notified of the life insurance class action. All parties opted out."

"In 1985 I purchased an interest in the VMS Limited Partnership. It was my understanding that I was part of a class action on that issue. I also admit that I entered into a financial planning contract with CIGNA. However, CIGNA was involved with stocks and bonds. The notice specifically talks about providing financial planning and investment advice for their investments made pursuant to their financial planning contracts. The notice does not say anything about life insurance, which is a separate issue. The notice was only made to John R. Kirwan. It was not made to the John R. Kirwan Trust or Caroline Susan Kirwan, as trustee. I had no notice whatsoever that my life insurance policies were part of this situation. In addition, I did not discover that I had any problem with my life insurance until well after this settlement had been entered into, which was approximately one year ago."

"The notice that has been sent to me does not apprise me that the sale of life insurance to me by a life insurance sales person is part of the class action."

Further, affiant sayeth not.

/s/ John R. Kirwan
John R. Kirwan

SUBSCRIBED AND SWORN TO BEFORE ME by the said John R. Kirwan, this the 10th day of December, 1996, to certify which witness my official hand and seal of office.

[SEAL]

/s/ Randye Biggs
Notary Public – State of Texas

NO. 96-44674

JOHN R. KIRWAN AND CAROLYN KIRWAN, INDIVIDUALLY AND CAROLINE SUSAN KIRWAN AND KATHLEEN MARY KIRWAN, AS TRUSTEES OF THE OF THE [SIC] JOHN R. KIRWAN, TRUST	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
CONNECTICUT GENERAL LIFE INSURANCE COMPANY AND KATHLEEN J. HUGHES, INDIVIDUALLY AND AS AGENT FOR CONNECTICUT GENERAL LIFE INSURANCE COMPANY	)	189TH JUDICIAL DISTRICT

AFFIDAVIT OF CAROLINE S. KIRWAN

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this day personally appeared CAROLINE S. KIRWAN, who deposed and stated as follows:

> "My name is Caroline S. Kirwan. I am a resident of Midland, Midland County, Texas. I have personal knowledge of the facts stated herein, and I know them to be true and correct.

"The notice of the class action pertaining to Connecticut General Life Insurance Company was sent to me as "owner" of Policy No. 5065553. The notice stated the insured was John R. Kirwan. Policy No. 5065553 was actually placed in the John R. Kirwan Trust. The John R. Kirwan trust is the actual owner of the policy for which I am co-trustee with my sister Kathleen Kirwan.

"I never received any notice regarding the class action lawsuit captioned *In the Matter of VMS Limited Partnership Securities Litigation,"* pertaining to financial planning and investment advice involving CIGNA. The only notice regarding a class action I ever received from CIGNA is the current one regarding life insurance."

Further, affiant sayeth not.

/s/ Caroline S. Kirwan
Caroline S. Kirwan

SUBSCRIBED AND SWORN TO BEFORE ME by the said Caroline S. Kirwan, this the 10th day of December, 1996, to certify which witness my official hand and seal of office.

[SEAL]

/s/ Randye Biggs
Notary Public – State of Texas

EXHIBIT A

CLASS NOTICE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALAN B. SPITZ, and LINDA H. SPITZ, individually and on behalf of all persons similarly situated, Plaintiffs, v. CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Defendants.	No. CV 95-3566 HLH (Ex) **NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

IF YOU PURCHASED A LIFE INSURANCE POLICY FROM CONNECTICUT GENERAL LIFE INSURANCE COMPANY BETWEEN AUGUST 1, 1983 AND MARCH 26, 1996, PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES VALUABLE BENEFITS THAT MAY BE AVAILABLE TO YOU AND IT MAY AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED.

You are hereby notified, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Central District of California (the "Court"), that a settlement (the "Settlement") has been reached by the parties in this action. If approved by the Court, the Settlement will result in: (a) in adjustments to enhance the performance of certain life

insurance policies issued during the period from August 1, 1983 through March 26, 1996 (the "Class Period") by Connecticut General Life Insurance Company ("CGLIC"); (b) the creation of a procedure for prompt resolution of misrepresentation claims relating to those policies (the "ADR Process" as described below) and (c) the release of claims as defined below.

This Notice summarizes the terms of the proposed Settlement. All of the details of the Settlement are set forth in the Stipulation of Settlement, which has been filed with the Court and may be inspected during regular business hours.

I. BACKGROUND OF THE LITIGATION.

A lawsuit is pending in the Court between defendant Connecticut General Life Insurance Company (hereinafter "the Company" or "CGLIC") and plaintiffs Alan B. and Linda H. Spitz, CGLIC life insurance policy owners. The Spitzes allege, on behalf of themselves and for all persons similarly situated, that the Company improperly included the effects of certain provisions of the Omnibus Budget Reconciliation Act of 1990, known as the "DAC Tax," in determining flexible or adjustable components under the CGLIC policies identified as "DAC TAX Policies" in Exhibit 2, attached hereto. The Spitzes also allege that the Company committed fraud and misrepresentation in the sale of life insurance policies by falsely representing the number of out-of-pocket payments that would be required for the life insurance policies in Exhibit 1.

A similar lawsuit is pending in the United States District Court for the Eastern District of Pennsylvania. In that lawsuit, plaintiff Ann Novacheck alleges, on behalf of herself and all persons similarly situated, that the Company committed fraud and misrepresentation in the sale of life insurance policies by falsely representing the number of out-of-pocket payments that would be required for the life insurance policies identified in Exhibit 1.

The plaintiffs, through their counsel, have conducted a thorough examination and investigation of the facts and law relating to the matters at issue in the lawsuit, and the parties have engaged in extensive, arms-length negotiations. Taking into account the extensive burdens and expenses associated with protracted trials and appeals, the plaintiffs have concluded that the proposed Settlement provides a fair, cost-effective and assured method of resolving claims, and is fair, reasonable, adequate and in the best interests of the Class.

Nothing in the Settlement shall be construed as an admission of wrongdoing on the part of CGLIC. The Company denies any wrongdoing in connection with the sale and administration of its life insurance policies. The Company firmly believes it has correctly applied the impact of federal tax laws, including the DAC Tax, in its policy computations, and that it has marketed the products properly and has in all respects acted in accordance with the terms of the policies in question. Nonetheless, CGLIC is determined to meet the concerns of its policy owners and to insure policy owner satisfaction. It is the

Company's belief that the proposed Settlement accomplishes these goals by efficiently providing immediate and substantial benefits to its policy owners.

In addition, the Company believes that further litigation of this matter would be protracted and expensive. Such activity would unavoidably divert resources that the Company would prefer to employ in serving its policy owners. For this reason as well, the Company believes that it is desirable that this litigation be fully and finally settled in the manner and upon the terms set forth in the proposed Settlement.

The Court has not considered the merits of the plaintiffs' claims, and this Notice should not be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by Plaintiffs or Defendant.

II. THE CLASS.

The proposed Settlement Class consists of current and former owners of individual interest-sensitive whole life, universal life, and participating life insurance policies issued by the Company during the Class Period. The Settlement Class does not include the Company's COLI products. A list of all policies included in the Settlement is attached hereto as Exhibit 1.

III. BENEFITS OF THE PROPOSED SETTLEMENT.

If approved by the Court, the Settlement will provide the following benefits to the Settlement Class:

A. Benefits To The DAC Tax Policies.

For members of the Settlement Class whose policies are in-force DAC Tax Policies, CGLIC will make adjustments in the calculation of flexible policy factors. These adjustments will be made automatically, and eligible class members need not take any action to claim such benefits. These adjustments are estimated to have an expected aggregate impact on policy owner cash surrender values of approximately $34.671 million over the lives of the policies and an expected net present value of approximately $13.050 million when discounted at a six percent annual rate. This amount assumes no lapses among the class members receiving these benefits. The benefits will begin at different times, depending on the particular policy, with some of the benefits becoming effective as of March 1, 1996. Benefits under this section will vary according to the value and type of policy.

For members of the Settlement Class whose DAC Tax Policies have lapsed between June 1, 1991 and December 27, 1996, CGLIC will make available for direct purchase a Connecticut General fixed annuity which is currently available in the lapsed policy owner's state of domicile. Eligible class members may make an initial payment into the annuity of an amount equal to a maximum of the sum of all premiums payable into the insurance policy from its issue date until the present. CGLIC will make a one-time three percent enhancement of that initial payment. To claim this benefit, eligible class members must make this payment within sixty (60) days of receipt of the Post-Settlement Notice, following approval by the court of the proposed settlement.

B. Alternative Dispute Resolution Benefits Available To All Class Members.

If you believe that the Company or its agents said or did anything to mislead you in your decision to purchase a life insurance policy identified in Exhibit 1, you may seek relief by participating in a claim evaluation process paid for by the Company. For example, if you believe that the Company or its agents misled you about the number of out-of-pocket payments required for your policy, you may seek relief by submitting a claim. You may call either toll-free "800" number on the last page of this Notice for more detailed information about possible misrepresentation claims. Remedies available under this process range from no relief to the full "benefit of the bargain" (i.e., the Company will provide an insurance product consistent with the terms of the alleged misrepresentation).

If you wish to pursue a misrepresentation claim, you must submit a Claim Form setting forth under oath the time, location, content, and nature (oral, written or both) of the alleged misrepresentation(s), along with any other information you believe supports the misrepresentation claim. You must attach to the Claim Form any relevant documents in your possession, custody or control, and describe any relevant documents you have seen but do not currently possess or control. Claim Forms will be mailed to all members of the Settlement Class as part of the Post-Settlement Notice, following approval by the Court of the proposed Settlement. There will be no cost to you for submitting a Claim Form. To be considered, Claim Forms must be post-marked no later than July 13, 1997.

Claims will be evaluated by at least one member of a Review Team comprised of CGLIC employees with experience in evaluating policy owner complaints. The Review Team may also interview the agent in question and will assemble all relevant documentation. The Review Team will evaluate each claim in accordance with a Scoring System approved by the Court, choose the remedy called for under the Scoring System, and mail its decision to each claimant in a form approved by the Court. The Review Team will be audited on behalf of Class Counsel, and all costs of the audit will be paid by the Company.

If you are dissatisfied with the decision of the Review Team, you may request alternative dispute resolution ("ADR") of the claim. There is no cost to you for requesting ADR. To request ADR, you must submit an ADR Request Form, in a form to be approved by the Court, to the Company within 20 days after receiving notice of the proposed remedy from the Review Team.

If you request ADR, the Policy Owner Referee, a person chosen by Class Counsel to protect your interests, will review the investigation and decision of the Review Team to determine whether the Review Team conducted an adequate investigation, and whether the Review Team applied the Scoring System in an accurate and fair manner. The Policy Owner Referee will mail to you a report in a form to be approved by the Court. After receiving the Policy Owner Referee's report, you may elect to continue with ADR or to accept the Review Team's proposed Remedy.

If you elect to continue with ADR, the claim will be assigned to an individual arbitrator selected from an arbitration panel whose composition will be determined jointly by Class Counsel and CGLIC's counsel. The arbitrator will receive the claim file from the Review Team. In addition, you and the Company may submit 5-page written briefs in support of your positions.

Arbitration hearings will be held within 150 miles of the residence of each claimant. Whenever feasible, the hearing will be held within 50 miles of the claimant. Upon your election, the hearing will be conducted by telephone conference call, to be arranged and paid for by the Company, excluding your costs or the costs of your counsel. At the hearing, you and the Company will be permitted to make brief oral presentations outlining your positions, and you may be asked questions by the arbitrator. You may, but need not, be represented by counsel (at your expense) at the hearing.

In reaching a decision, the arbitrator will be limited to the Scoring System and remedies set forth in the Stipulation of Settlement. The decision of the arbitrator will be binding on all parties, regardless of whether the arbitrator's award is more or less favorable to you than the proposed Remedy from the Review Team.

IV. ATTORNEYS' FEES.

Defendant CGLIC will make a lump sum payment of attorneys' fees to the Spitz Plaintiffs' counsel in the amount of $1.35 million, upon approval by the Court of the proposed Settlement. In addition, CGLIC will pay for all expenses incurred in providing the required Class

Notices, and in administering the Settlement and ADR Process, except that Class Members will be responsible for any costs and fees of any counsel retained to represent them individually at the Settlement Hearing or during the arbitration phase of the ADR Process. Furthermore, upon conclusion of the ADR Process, CGLIC will pay the Spitz Plaintiffs' counsel attorneys' fees equal to ten percent of the aggregate recovery by ADR Claimants under that process. Finally, CGLIC will advance the attorneys' fees payable under the preceding sentence at court-approved hourly rates for certain specified activities requiring Class counsel's attention during the administration of the ADR Process.

Counsel for plaintiff in the Novacheck action will petition the Court for an award of attorneys' fees to be paid by CGLIC. CGLIC reserves the right to oppose that request.

V. INCENTIVE AWARD TO NAMED PLAINTIFFS.

Plaintiffs Alan and Linda Spitz and plaintiff Ann Novacheck reserve the right to request from the Court an incentive award, not to exceed the sum of $25,000 for the Spitzes and the sum of $25,000 for Ann Novacheck, upon notice to the Class, in recognition of their efforts as Class Representatives in this litigation, including consultations with counsel, participation in exchanges of information regarding claims asserted, and an analysis of the proposed settlement. CGLIC agrees not to oppose the request for incentive awards and further agrees to pay any sum awarded as incentives to plaintiffs Alan and Linda Spitz and plaintiff Ann Novacheck, in addition to all other

consideration paid or to be paid as a result of this settlement.

VI. FINAL RESOLUTION OF CLAIMS.

If the proposed Settlement is approved by the Court, Class Members will receive the benefits described herein and specifically defined in the settlement. In exchange, Class Members will permanently give up the right to assert any and all claims, known or unknown, that they currently possess, may possess, or may have possessed against CGLIC (including claims against its past or present officers, directors, agents, employees, parents, affiliates, subsidiaries, divisions, successors, assigns, or legal representatives) relating in any way to the life insurance policies that are the subject of this lawsuit. Such claims could include without limitation breach of contract, breach of implied covenant of good faith and fair dealing and fraud, and could give rise to compensatory and punitive and exemplary damages. If you do not exclude yourself from the Class, you will give up your right to assert any such claims. The release does not preclude assertion of misrepresentation claims in the ADR proceeding. Furthermore, regardless of whether you participate in the Settlement, CGLIC will continue to apply premiums and pay death benefits under its policies in accordance with the terms and conditions of those policies.

If the proposed Settlement is not approved by the Court or does not become final for any reason, the litigation will continue against Defendant CGLIC.

VII. THE SETTLEMENT HEARING.

A hearing will be held on January 13, 1997, at 10:00 a.m. in Courtroom 7 of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California, before the Honorable Harry L. Hupp, to determine: A) whether the proposed Settlement should be approved as fair, adequate and reasonable; B) the amount of the incentive award that should be awarded to the named Plaintiffs; and C) the amount of attorneys' fees, litigation costs and expenses that should be awarded to Plaintiffs' counsel. The hearing may be continued without further notice. It is not necessary for you to appear at the Settlement Hearing.

VIII. EXAMINATION OF RECORDS AND INQUIRIES.

This Notice is only a summary of the basic terms of the proposed Settlement. You are referred to the Stipulation of Settlement that is on file with the Clerk of the Court for the precise terms and conditions of the proposed Settlement. The terms of the Stipulation of Settlement control over the summary set forth herein.

IX. THE RIGHTS OF CLASS MEMBERS.

Your options as a member of the Class are as follows:

A. You May Do Nothing and Remain A Member of the Class.

If you wish to receive the benefits described above, you do not have to do anything. If you choose to take no

action, you will remain a member of the Class, your interests as a Class Member will be represented by the named plaintiffs and their counsel, and you will be bound by the terms of the Settlement, if approved by the Court, and any final judgments that may be entered.

As a member of the Class, you will not be responsible for attorneys' fees or litigation expenses.

B. You May Remain a Member of the Class and Assert an Objection to the Proposed Settlement.

If you wish to remain in the Class, but wish to object to the fairness, reasonableness, or adequacy of this Settlement, you must serve on Class counsel and CGLIC's counsel and file with the Court, no later than December 27, 1996, a statement of the objection, as well as the specific reason(s), if any, for each objection, including any legal support that you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may do so either on your own or through an attorney hired at your own expense. If you hire an attorney to represent you, the attorney must (i) file a notice of appearance with the Clerk of Court no later than December 27, 1996 and (ii) serve on Plaintiffs' counsel and CGLIC's counsel, by December 27, 1996, a copy of the same. Any judgment entered in this action, whether favorable or unfavorable to the Class, will include and be binding on all Class Members who have not been excluded from the Class, even if they have objected to the Proposed Settlement and even if they have any other claim, lawsuit or proceeding pending against Defendants.

Objections, appearances, and any other documents filed with the Court must be served on counsel at the following addresses:

Robert K. Scott
Douglas K. deVries
c/o The Law Offices of
Robert K. Scott
660 Newport Center Drive,
Suite 950
Newport Beach, CA 92660
(Counsel for plaintiffs)

Mark C. Rifkin
Greenfield & Rifkin LLP
800 Times Building
Ardmore, PA 19003
(Counsel for plaintiffs)

John W. Stamper
George H. Brown
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899
(Counsel for CGLIC)

C. You May Request Exclusion From the Class.

If you do not wish to receive the benefits described above, you may exclude yourself from the Class. Your request for exclusion must be in writing, must include your name, address, telephone number, and policy number(s), and must be sent to: CGLIC Litigation, Post Office Box 3190, Los Angeles, California 92834. NO REQUEST FOR EXCLUSION WILL BE VALID UNLESS IT CONTAINS ALL THE INFORMATION DESCRIBED ABOVE AND IS POSTMARKED NO LATER THAN DECEMBER 27, 1996. In order to insure timely handling of your request, the words "REQUEST FOR EXCLUSION" should be typewritten or legibly handwritten on the front of the envelope containing your exclusion request.

If you exclude yourself from the Class and the proposed Settlement is approved by the Court, you will not be eligible to share in the proceeds of any settlement and will remain free to pursue any legal rights you may have against Defendant.

For information regarding your rights and the terms of the proposed Settlement, you may contact Class Counsel as follows:

By mail: Class Counsel
CGLIC Class Action
P.O. Box 3190
Fullerton, CA 92834

By telephone: 1-(800) 607-5556

For information regarding the current status of your policy, you may call toll free 1-(800) 250-4381 to speak to a representative of CGLIC:

DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

DATED: October 9, 1996

Clerk of the Court
United States District Court
Central District of California

EXHIBIT 1

LIST OF POLICIES INCLUDED IN THE SETTLEMENT CLASS

Advance
Forms LN501, LN502, LN511 and state variations (excluding COLI policies sold using the same Form number)

Estate Preference I, II, 1.5; and 3
Forms LN700 and state variations

Preference I
Forms LN 395BB, LN396BB, LN397BB, LN398BB and state variations

Preference II
Forms LN800, LN801 and state variations

Preference II+
Forms LN395BB and LN396BB

Preference 3
Forms LN800, LN801 and state variations

Preference 3+
Forms LN395, LN396 and state variations

1978 Edition Participating
Forms LP120 and LP121 and state variations

Plus One
Form LN500 and state variations

Corporate Continuum
Form LN505 and state variations (excluding COLI policies sold under the same form number)

Estate Continuum
Form LN750 and state variations

UL-1
Form LN525 and state variations

SUL-1
Form LN770 and state variations

WL-1
Form LN805, LN806 and state variations

Continuum
Form LN505 and state variations (excluding COLI policies sold under the same form number)

Precedent
Forms LN410-LN413, LN450-LN453, LN461-LN463 and LN470-LN473, all when issued with a Cash Plan Rider; and Forms LN351, LN380, and LN381 and state variations

Choice
Forms LP150-153

EXHIBIT 2

DAC TAX POLICIES

I. Estate Preference I. Estate Preference I ("EPI") policies (Policy Form LN700 and state variations) purchased during the period from 1988 (product inception) through December 31, 1995.

II. Preference I. Preference I policies (Policy Forms LN395BB, LN396BB, LN397BB, LN398BB and state variations) purchased during the period from January, 1989 through December 31, 1995.

III. Preference II and Preference II+. Preference II policies (Policy Forms LN800, LN801 and state variations) and owners of Preference II+ (Policy Forms LN395BB and

LN396BB and state variations) purchased during the period from September, 1990 (product inception) through December 31, 1995.

IV. Advance. Advance policies (Policy Forms LN 501, LN511, LN502 and state variations) purchased during the period from March 1984 (product inception) through December 31, 1995.

V. Continuum. Continuum policies (Policy Form LN505 and state variations) purchased during the period from January, 1987, (product inception) through December 31, 1995.

VI. Precedent. Precedent policies (Policy Forms LN410-LN413, LN450-LN453, LN461-LN463 and LN470-LN473, all when issued with a Cash Plus Rider ("CPR") and Policy Forms LN351, LN380 and LN381 and state variations thereof) purchased during the period from August, 1983, (product inception) through June, 1990 (product end).

VII. Choice. Choice policies (Policy Forms LP150-LP153) purchased during the period from January, 1984 (product inception) through December 31, 1987 (product end).

EXHIBIT B

October 29, 1996

CGLIC Litigation
Post Office Box 3190
Fullerton, California 92834

RE: REQUEST FOR EXCLUSION

To Whom It May Concern:

Please be advised that I, John R. Kirwan, wish to be excluded from the class action settlement. The policy which I purchased, number 5065553, was placed in the John R. Kirwan Trust. My address and the address for the trust is 301 N. Colorado, Suite 228, Midland, Texas 79701. My current telephone number is (915) 682-8619, however, I wish to be contacted through my attorney, David L. Sheller, at (713) 961-0291.

Sincerely,

/s/ John R. Kirwan
John R. Kirwan

SENDER:
• Complete items 1 and/or 2 for additional services.
• Complete items 3, 4a, and 4b
• Print your name and address on the reverse of this form so that we can return this card to you.
• Attach this form to the front of the mailpiece, or on the back if space does not permit.
• Write *"Return Receipt Requested"* on the mailpiece below the article number.

• The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. [ ] Addressee's Address
2. [ ] Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:
CGLIC Litigation
P.O. Box 3190
Fullerton, CA 92834

4a. Article Number
P 6/7 113 620
4b. Service Type
[ ] Registered
[ ] Express Mail
[X] Return Receipt for Merchandise
[X] Certified
[ ] Insured
[ ] COD

5. Received By: (*Print Name*)
Donice M Price
6. Signature: (*Addressee or Agent*)
X /s/ Donice Price

7. Date of Delivery
11-5-96

8. Addressee's Address (*Only if requested and fee is paid*)
Kirwan
PS Form 3811, December 1994 Domestic Return

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE
Bar Code
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10
• Print your name, address, and ZIP Code in this box •

DAVID L. SHELLER & ASSOCIATES
SUITE 3028, THE COASTAL TOWER
9 GREENWAY PLAZA
HOUSTON, TEXAS 77046

Letter Re:
Request For Exclusion

EXHIBIT C

The enclosed notice pertains to Connecticut General Life Insurance Policy:

Number: 5065553

Insured: John R Kirwan

Owner: John R Kirwan

If you are not the owner of this policy, this notice is for information only.

John R Kirwan
2405 Shell
Midland TX 79705-8520

EXHIBIT D

The enclosed notice pertains to Connecticut General Life Insurance Policy:

Number: 5065553

Insured: John R Kirwan

Owner: Caroline Kirwan

If you are not the owner of this policy, this notice is for information only.

Caroline Kirwan
2405 Shell
Midland TX 79705-8520

EXHIBIT E

CIGNA Securities, Inc.
[LOGO]

FINANCIAL PLANNING SERVICES
ONE YEAR CONTRACT

Financial Planning Services Contract Between CIGNA Securities, Inc., a registered investment advisor ("Advisor") and the client named below.

---

1. GENERAL PURPOSE.

By this contract, you engage Advisor to provide personal financial planning services for a period of one year, as described below, and Advisor agrees to provide these services.

2. SERVICES TO BE PROVIDED.

During the term of this contract Advisor will provide planning services in the areas specified below. Planning services will be summarized by a written plan for you which reflects your current financial circumstances, your financial outlook and your personal objectives.

[X] Estate Planning
[ ] Business Continuity Planning
[X] Retirement Planning
[ ] Fringe Benefit Planning
[ ] Income Tax Planning
[ ] Investment Planning

3. PLANNING WILL FOLLOW THIS PROCESS.

In creating your plan, you and Advisor will follow this process:

a. Data: You will provide Advisor with financial and personal data necessary to prepare your plan.

b. Analysis: Advisor will analyze data and documents provided, evaluate your ability to meet your objectives, make observations, identify problems and recommend strategies for your consideration.

c. Written Plan: On the basis of the data you provide and the objectives chosen, Advisor will prepare and present a personal financial plan summarized in written form.

4. COMPENSATION TO ADVISOR FOR PLANNING SERVICES.

For the financial planning services described above, you agree to pay a fee of $1250.00.

(Continued on reverse)

This financial planning contract is agreed to between us, effective (*Date*) 4-24-91 at (*City/State*) MIDLAND, TEXAS

Name of Client John R. Kirwan
Social Security Number 441-20-7200
Name of Client Carolyn Kirwan
Social Security Number 085-24-2537
Street 400 West Texas; 1216 Vaughn Bldg
City Midland State TX Zip 79701
Phone: Bus. 915-682-8619 Home 915-684-4191
Client Signature /s/ John R. Kirwan
Client Signature /s/ Carloyn Kirwan

By /s/ Kathleen J. Hughes
Authorized Representative

By /s/ Illegible
Authorized Representative

5. IMPLEMENTATION OF YOUR FINANCIAL PLAN.

The services of Advisor under this contract are limited to recommending strategies for you to consider to achieve your financial objectives. We will at your request, facilitate and coordinate the necessary steps to implement your plan in conjunction with your attorney, accountant and other pertinent advisors. However, our services are analytical and advisory only and do not include any legal, accounting or other professional services.

Implementation of product related recommendations is not included under this financial planning contract. If you desire, CIGNA Securities, Inc. and its affiliates, acting in a sales capacity, will recommend specific investments, insurance or other financial products through which your plan can be specifically implemented. The purchase of such products normally results in the payment of commissions. There is no additional fee for this service.

6. RENEWAL OF YOUR FINANCIAL PLAN.

At the end of the term of this contract, you may engage Advisor to provide financial services for an additional year. Advisor will determine the renewal fee based on services to be provided. Both you and Advisor retain the right not to renew this contract.

7. MAJOR REVISIONS.

If at any time your Plan requires a major revision (resulting, for example, from the sale of a business or a divorce) an additional fee may be charged. We will quote this fee to you and receive your consent to it in advance of performing any work on the revision.

8. RECEIPT OF DISCLOSURE BROCHURE.

You acknowledge receipt of Advisor's Disclosure Brochure. This Disclosure Brochure has been prepared and delivered in accordance with the Investment Adviser's Act of 1940 and the rules thereunder. It contains important information concerning the background and organization of Advisor and its key people. It also describes possible conflicts of interest. You should be aware of the multiple roles which CIGNA Securities, Inc. and its affiliates play as financial advisor and as issuer, investment manager and/or broker with respect to various financial products.

9. NO RIGHT OF ASSIGNMENT.

Advisor may not assign this contract, as that term is defined in the Investment Adviser's Act of 1940.

10. RIGHT TO TERMINATE.

You have the right to terminate this contract without penalty at any time within five business days after the effective date of this contract. To effect termination you must notify Advisor in writing.

11. ENTIRE AGREEMENT; AMENDMENT

This contract constitutes the entire agreement between us. It may be amended only by a written agreement signed by you and by an officer of Advisor.

12. NOTICES.

All notices and other communications hereunder shall be in writing.
